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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 45

GEORGE B. PETITE, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 20, 1959

CERTIORARI GRANTED JUNE 15, 1959

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IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 7594

GEORGE B. PETITE,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND AT BALTIMORE
(ROSZEL C. THOMSEN, Chief Judge)

APPELLANT'S APPENDIX

INDICTMENT

In the United States District Court
for the District of Maryland

Criminal No. 23739
(Subornation of Perjury in Violation of U. S. C. Title 18, Section 1622)

United States Of America

vs.

George B. Petite

The Grand Jury for the District of Maryland charges:

Beginning on or about the 12th day of October, 1951, and continuing until the 16th day of June, 1952, at Baltimore, in the State and District of Maryland,

GEORGE B. PETITE

did knowingly, willfully and unlawfully procure and suborn Georgios Modestou Kostatos, also known as Georgios Modestou Kotsatos, to commit perjury in a proceeding being conducted under the Laws of the United States, to wit, the Warrant Hearing of Georgios Modestou Kostatos being conducted by the Immigration and Naturalization Service of the Department of Justice, said proceeding being a case in which the law of the United States authorizes an oath to be administered, in that GEORGE B. PETITE did knowingly, willfully and unlawfully procure the said Georgios Modestou Kostatos to testify willfully and corruptly on February 14, 1952, at Baltimore, in the District of Maryland, the said Georgios Modestou Kostatos having taken an oath to

testify truly before John V. Carney, a competent officer of said Immigration and Naturalization Service duly authorized by law to administer an oath and to take testimony, to the following material matters which the said Georgios Modestou Kostatos then and there did not believe to be true, to wit:

(1) That his name was Ioannis Georgios Sitaras (John George Sitaras);

(2) That he was born in the United States;

(3) That he was not born in Greece;

(4) That he was baptized in Philadelphia, Pennsylvania; in 1920;

(5) That his parents lived in Chester, Pennsylvania, at the time of his birth;

(6) That his father's name was Georgios Sitaras;

(7) That his mother's name was Maria Spanos Sitaras;

(8) That his uncle, Ioannis Costas Sitaras (Kostas Sitaras) took him at the age of four or five to Greece;

(9) That he was not registered in any military records in Greece;

(10) That he never served in the militaryl forces of any country;

(11) That he used a friend's papers in order to obtain a job on the ship SS SANTA IRENE;

all of the foregoing statements and testimony of the said Georgios Modestou Kostatos being false, the said Georgios Modestou Kostatos then and there knowing the same to be false; and the said GEORGE B. PETITE then there well knew and believed that the foregoing statements and testimony, when made, would be false, and then and there knew and believed that the said Georgios Modestou Kostatos would willfully and corruptly testify to facts which he knew to be false.

U. S. C. Title 18, Section 1622.

SECOND COUNT

And the Grand Jury for the District of Maryland further charges:

Beginning on or about the 12th day of October, 1951, and continuing until the 16th day of June, 1952, at Baltimore, in the State and District of Maryland,

GEORGE B. PETITE

did knowingly, willfully and unlawfully procure and suborn Eleftherios Sitaras, also known as Louis Sitaras, of Baltimore, Maryland, to commit perjury in a proceeding being conducted under the laws of the United States, to wit, the Warrant Hearing of Georgios Modestou Kostaios being conducted by the Immigration and Naturalization Service of the Department of Justice, said proceeding being a case in which the law of the United States authorizes an oath to be administered, in that GEORGE B. PETITE did knowingly, willfully and unlawfully procure the said Eleftherios Sitaras to testify willfully and corruptly on June 16, 1952, at Baltimore, in the District of Maryland, the said Eleftherios Sitaras having taken an oath to testify truly before John V. Carney, a competent officer of said Immigration and Naturalization Service duly authorized by law to administer an oath and to take testimony, to the following material matters the said Eleftherios Sitaras then and there did not believe to be true, to wit:

That Georgios Modestou Kostatos was an individual named John Sitaras, who was taken to Greece from the United States by his uncle, Constantine Sitaras, in 1927; who came to the school attended by the said Eleftherios Sitaras in the village of Kourounia, Chios, Greece, near the end of the school term; who was known as "Big Ears Johnny," because his ears were "flapped out"; who had a birthmark on his arm; and whose grandparents were named John Sitaras and Maria Sitaras;

all of the foregoing statements and testimony of the said Eleftherios Sitaras being false, the said Eleftherios Sitaras then and there knowing the same to be false; and the said GEORGE B. PETITE then and there well knew and believed that the foregoing statements and testimony, when made, would be false, and then and there knew and believed that the said Eleftherios Sitaras would willfully and corruptly testify to facts which he knew to be false.

U. S. C. Title 18, Section 1622

WALTER E. BLACK, JR.,
United States Attorney.

A TRUE BILL:

/s/ FERDINAND MEYER,
Foreman.

MOTION BY DEFENDANT TO DISMISS INDICTMENT

In the United States District Court
for the District of Maryland

Criminal No. 23739
(Subornation of Perjury in Violation of U. S. C.
Title 18, Section 1622)

United States Of America
vs.
GEORGE B. PETITE

The Defendant moves that the indictment herein be dismissed on the following grounds:

The Defendant has been tried and sentenced on his plea of nolo contendere and placed in jeopardy of conviction of the offenses charged therein in the case of "United States

of America vs. George Petite, et al.", in the United States District Court for the Eastern District of Pennsylvania, Case No. 17934, terminated on November 10, 1955.

And he has been placed in jeopardy of conviction of the offense charged therein in the case of "United States of America vs. George B. Petite", in the United States District Court for the Eastern District of Pennsylvania, Case No. 17946, terminated on November 10, 1955.

GEORGE B. PETITE,
Defendant.

BERNARD J. FLYNN,
1019 Fidelity Bldg.,
Baltimore 1, Maryland,
Attorney for Defendant.

OPINION AND ORDER DENYING DEFENDANT'S MOTION TO DISMISS

(Filed January 17, 1957)

In the United States District Court
for the District of Maryland

Criminal No. 23739

United States Of America
vs.
George B. Petite

Thomsen, Chief Judge

George B. Petite, indicted on two counts for subornation of perjury, in violation of 18 U. S. C. 1622, seeks dismissal of the indictment on the ground of double jeopardy.

On August 21, 1956, the Grand Jury for the District of Maryland returned an indictment against Petite charging him on two counts with subornation of perjury. The first count charges that Petite suborned Georgios Modestou Kotsatos to commit perjury before the Immigration & Naturalization Service (INS) on February 14, 1952, at Baltimore. The second count charges that Petite suborned Louis Sitaras of Baltimore, Maryland, to commit perjury before the INS on June 16, 1952, at Baltimore.

Previously, the Grand Jury for the Eastern District of Pennsylvania had returned an indictment (No. 17934) against Petite and five other defendants, including Kotsatos and Sitaras. The first count of that indictment charged the defendants with conspiring to make false, fictitious and fraudulent statements to officers of the INS, in violation of 18 U. S. C. 371 and 1001. Among the overt acts charged in the count were: No. 6, that "on or about Feburary 14, 1952, Georgios Kotsatos, also known as George Modestou Kotsatos, did make a certain sworn statement at Baltimore, Maryland, Louis Sitaras of Baltimore, Maryland, did make a certain sworn statement". The second count of Pennsylvania indictment No. 17934 charged the same defendants with conspiring to defraud the United States and the INS for the purpose of preventing the deportation of Georgios Kotsatos, in violation of 18 U. S. C. 371. Overt acts Nos. 6 and 7 charged in the second count of that indictment were the same as overt acts Nos. 6 and 7 charged in the first count. Overt act No. 3 in both counts charged Petite with offering in evidence in the deportation hearing at Baltimore on February 14, 1952, affidavits obtained from Louis Sitaras, of Marcus Hook, Pennsylvania (note the Louis Sitaras referred to in the Maryland indictment), Peter S. Pahides and Gustav Katsaras. Overt act No. 10 in the second count of the Pennsylvania indictment charged Petite with requesting the issuance of a certain baptismal certificate.

After trial in the United States District Court for the Eastern District of Pennsylvania, Petite was convicted upon his plea of nolo contendere on the first count of the indictment and was sentenced to two months' imprison-

ment and a fine of $500. On the motion of the United States Attorney, the second count of the indictment was dismissed.

The Grand Jury for the Eastern District of Pennsylvania had also returned a three count indictment against Petite (No. 17946), charging him with subornation of perjury. The three counts charged that Petite suborned Pahides, Katsaros and Louis Sitaras of Marcus Hook, Pennsylvania, respectively, to commit perjury before the INS on April 25, 1952, at Philadelphia. Following the trial in the Eastern District of Pennsylvania, this indictment was dismissed by the court, upon the motion of the United States Attorney.

The motion to dismiss the Maryland indictment alleges that a trial on the Maryland indictment will place Petite in double jeopardy because of the prior proceedings in the Eastern District of Pennsylvania. The controlling authorities, however, do not support this contention. "It is settled law in this country that the commission of a substantive offense and a conspiracy to commit it are separate and distinct crimes, and a plea of double jeopardy is not defense to a conviction for both. See *Pinkerton v. United States*, 328 U. S. 640, 643-644, and cases cited therein. Only if the substantive offense and the conspiracy are identical does a conviction for both constitute double jeopardy." *Pereira v. United States*, 347 U. S. 1, 11.

The defendant contends that the charge in each of the indictments is identically the same. But an examination of the three indictments shows that the charges are not identical. "It has been long and consistently recognized by the Court that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses. The power of Congress to separate the two and to affix to each a different penalty is well established. *Clune v. United States*, 159 U. S. 590, 594-595." *Pinkerton v. United States*, 328 U. S. 640, 643.

No doubt, if Petite did procure Kotsatos and Sitaras of Baltimore to testify falsely, as charged in the Maryland indictment, he did so in furtherance of the conspiracies charged in counts 1 and 2 of Pennsylvania indictment No.

17934. But that does not make the offenses identical. "* * * the charge of conspiracy requires proof not essential to the convictions on the substantive offenses — proof of an agreement to commit an offense against the United States — and it cannot be said that the substantive offenses and the conspiracy are identical, any more than that the two substantive offenses are identical." *Pereira v. United States, supra*, pp. 11-12. See *Williamson v. United States*, 207 U. S. 425, 446 et seq.; *Outlaw v. United States*, (5 Cir.) 81 F. 2d 806.

In the case we are considering the overt acts charged in the conspiracy indictment in Pennsylvania were the giving of false testimony by Kotsatos and Sitaras of Baltimore, and the offering in evidence by Petite of false affidavits made by Pahides, Katsaras and Sitaras of Marcus Hook. The subornation of the witnesses by Petite was not charged as an overt act or otherwise referred to in the conspiracy indictment; even if it had been, that would not entitle Petite to claim double jeopardy. *Pinkerton v. United States, supra*, at 644.

The essence of the conspiracy charge was the agreement. *Pereira v. United States, supra*, pp. 11-12; *Williamson v. United States, supra*, p. 446 et seq.; *United States v. Bayer*, 331 U. S. 532, 542; the essence of the charge in the case pending in this court is that Petite procured and suborned Kotsatos and Sitaras to commit perjury. To "procure" and to "suborn" mean to contrive, to cause, to induce, to instigate; and agreement is not a necessary element, although frequently present. "To constitute subornation of perjury, which is an offense at common law, the party charged must procure the commission of the perjury, by inciting, instigating, or persuading the witness to commit the crime. Perjury must have been actually committed, and this must appear in the indictment." *Wharton's Criminal Law*, Vol. 2, 12th ed., sec. 1595, pp. 1844-1845.

In the present case Petite is charged with subornation of perjury, which, as we have seen, does not require proof of any agreement between the suborner and the perjurer, but does require proof of the commission of the perjury. In each count of case No. 17934, in the Eastern District of

Pennsylvania, Petite and five others were charged with conspiracy, which did not require proof of any subornation by Petite nor of any actual perjury by anyone, but did require proof of an agreement by the parties to carry out the purposes of the conspiracy, and some overt act in furtherance thereof.

The conspiracy charge and the subornation charge are not rendered identical because two people — the suborner and the perjurer — were necessarily involved in this, as in every, subornation charge. At least two people must be involved in every conspiracy case; and frequently one of the conspirators aids or abets another in committing one of the overt acts. If that overt act is also charged as a substantiye offense in the same or a different indictment, the aider and abettor may be charged with and punished for the substantive offense, even though he is also charged and punished as a conspirator. *Pereira v. United States, supra.*

The question in this case is not whether a suborner and a perjurer may properly be convicted of conspiracy, without proof of other facts or the conviction of other conspirators. Cf. *Gebardi v. United States;* 287 U. S. 112, 122-123; *Williams v. United States, supra.* Nor is it a case where the government is attempting to carve a single conspiracy into smaller conspiracies, so that a number of prosecutions may be had for the same offense. *Braverman v. United States,* 317 U. S. 49. Each of the subornations alleged in the indictments in the instant case, and in case No. 17946 in the Eastern District of Pennsylvanoa, was a separat offense, for which Petite, if guilty, was subject to separate punishment. And if Petite also conspired with the alleged perjurers for the purpose set out in either of the counts of the indictment in case No. 17934, and some overt act was done in pursuance thereof, that, too, was a separate offense. *Pinkerton v. United States, supra.* No double jeopardy has been shown.

The motion to dismiss the indictment is hereby denied.

ROSZEL C. THOMSEN,
Chief Judge, U. S. District Court.

INDICTMENT

Title 18 U.S.C., Sec. 371

In the United States District Court
For the Eastern District of Pennsylvania

No. 17934

Conspiracy to make false, fictitious and fraudulent statements to the Immigration and Naturalization Service, an agency of the United States; conspiracy to defraud the Immigration and Naturalization Service, an agency of the United States.

United States of America
vs.
Gustav Katsaros, Pantelis S. Pahides, also known as Peter S. Pahides, Georgios Kostatos, also known as George Modestos Kostatos, George Petite, Louis Sitaras, of Marcus Hook, Pa., Louis Sitaras, of Baltimore, Md.

THE GRAND JURY CHARGES:

Count 1.

That on or about October 23, 1951 and continuing until on or about February, 1954, GUSTAV KATSAROS, PANTELIS S. PAHIDES, also known as Peter S. Pahides, GEORGIOS KOSTATOS, also known as George Modestos Kostatos, GEORGE PETITE, LOUIS SITARAS, of Marcus Hook, Pennsylvania and LOUIS SITARAS, of Baltimore, Maryland, hereinafter called "defendants", within the Eastern District of Pennsylvania and divers other places within the United States, did unlawfully, willfully and knowingly conspire, confederate and agree together and one with the other to commit an offense against the United States, to wit: to make false, fictitious

and fraudulent statements to an agency of the United States, in violation of the laws of the United States, more particularly did submit certain affidavits and did make certain sworn statements to officers of the Immigration and Naturalization Service, an agency of the United States, knowing said affidavits and sworn statements to be false, fictitious and fraudulent, in violation of Title 18 U.S.C., Section 1001; all of which was in violation of Title 18 U.S.C., Section 371.

In furtherance of the aforesaid conspiracy said defendants committed the following overt acts:

Overt Act No. 1. On or about February 8, 1952, defendants, PANTELIS S. PAHIDES, also known as Peter S. Pahides, and LOUIS SITARAS, of Marcus Hook, Pennsylvania, executed sworn affidavit at Marcus Hook, Pennsylvania.

Overt Act No. 2. On or about February 11, 1952, defendant, GUSTAV KATAROS, executed a sworn affidavit at Marcus Hook, Pennsylvania.

Overt Act. No. 3. On or about February 14, 1952, said affidavits mentioned in Overt Acts No. 1 and 2 were offered in evidence in the deportation hearing on said date by defendant GEORGE PETITE at Baltimore, Maryland.

Overt Act No. 4. On or about April 25, 1952 at Philadelphia, Pennsylvania, defendants PANTELIS S. PAHIDES, also known as Peter S. Pahides, GUSTAV KATSAROS and LOUIS SITARAS of Marcus Hook, Pennsylvania, did, under oath, make certain sworn statements.

Overt Act No. 5. On or about October 23, 1951, GEORGIOS KOSTATOS, also known as George Modestos Kostatos did make a certain sworn statement at Baltimore, Maryland.

Overt Act. No. 6. On or about February 14, 1952, GEORGIOS KOSTATOS, also known as George Modestos Kostatos did make a certain sworn statement at Baltimore, Maryland.

Overt Act, No. 7. On or about June 16, 1952 at Baltimore, Maryland, LOUIS SITARAS, of Baltimore, Maryland, did make a certain sworn statement.

Overt Act. No. 8. On or about December 2, 1953 at Philadelphia, Pennsylvania, PANTELIS S. PAHIDES, also known as Peter S. Pahides, did make a certain sworn statement.

THE GRAND JURY CHARGES:

Count 2.

That on or about October 23, 1951 and continuing until on or about February, 1954, GUSTAV KATAROS, PANTELIS S. PAHIDES, also known as Peter S. Pahides, GEORGIOS KOSTATOS, also known as George Modestos Kostatos, GEORGE PETITE, LOUIS SITARAS, of Marcus Hook, Pennsylvania and LOUIS SITARAS of Baltimore, Maryland, hereinafter called "defendants", within the Eastern District of Pennsylvania and divers other places within the United States, did unlawfuly, willfully and knowingly conspire, confederate and agree together and one with the other to commit an offense against the United States, to wit: to defraud the United States and an agency thereof, to wit: the Immigration and Naturalization Service; more particularly, said defendants did conspire, confederate and agree to obstruct the enforcement of the Immigration Laws, (Title 8 U.S.C., Secs. 1251 and 1252) and the Regulations promulgated pursuant thereto, (8 CFRB, Sec. 242) for the purpose of preventing deportation of one GEORGIOS KOSTATOS, also known as George Modestos Kostatos, all of which being in violation of Title 18, U.S.C., Section 371.

In furtherance of the aforesaid conspiracy said defendants committed the following overt acts:

Overt Act No. 1. On or about February 8, 1952, defendants, PANTELIS S. PAHIDES, also known as Peter S. Pahides, and LOUIS SITARAS of Marcus Hook, Pennsylvania, executed sworn affidavit at Marcus Hook, Pennsplvania.

Overt Act No. 2. On or about February 11, 1952, defendant, GUSTAV KATSAROS, executed a sworn affidavit at Marcus Hook, Pennsylvania.

Overt Act No. 3. On or about February 14, 1952, said affidavits mentioned in Overt Acts No. 1 and 2 were offered

in evidence in the deportation hearing on said date by defendant GEORGE PETITE at Baltimore, Maryland.

Overt Act No. 4. On or about April 25, 1952 at Philadelphia, Pennsylvania, defendants PANTELIS S. PAHIDES, also known as Peter S. Pahides, GUSTAV KATSAROS and LOUIS SITARAS, also known as Peter S. Pahides, GUSTAV KATSAROS and LOUIS SITARAS of Marcus Hook, Pennsylvania, did, under oath, make certain sworn statements.

Overt Act No. 5. On or about October 23, 1951, GEORGIOS KOSTATOS, also known as George Modestos Kostatos did make a certain sworn statement at Baltimore, Maryland.

Overt Act No. 6. On or about February 14, 1952, GEORGIOS KOSTATOS, also known as George Modestos Kostatos did make a certain sworn statement at Baltimore, Maryland.

Overt Act No. 7. On or about June 16, 1952 at Baltimore, Maryland, LOUIS SITARAS, of Baltimore, Maryland, did make a certain sworn statement.

Overt Act. No. 8. On or about December 2, 1953 at Philadelphia, Pennsylvania, PANTELIS S. PAHIDES, also known as Peter S. Pahides, did make a certain sworn statement.

Overt Act No. 9. On or about September, 1953, defendant, LOUIS SITARAS of Marcus Hook, Pennsylvania, GUSTAV KATSAROS and GEORGIOS KOSTATOS, also known as George Modestos Kostatos went to the Greek-Orthodox Church in Philadelphia, Pennsylvania to obtain a baptismal certificate.

Overt Act No. 10. On or about September, 1953, defendant, GEORGE PETITE, requested the issuance of a baptismal certificate from a clergyman of the Greek-Orthodox Church in Philadelphia, Pennsylvania.

A TRUE BILL

Foreman.

W. WILSON WHITE,
United States Attorney.

By:
G. CLINTON FOGWELL, JR.,
Assistant United States Attorney.

INDICTMENT

Title 18 U.S.C., Section 1622

In the United States District Court
For the Eastern District of Pennsylvania

Criminal No. 17946
Subornation of Perjury

United States of America
vs.
George B. Petite

COUNT 1.

The Grand Jury Charges:

That beginning on or about February 8, 1952, and at divers times thereafter and theretofore, the defendant, GEORGE B. PETITE, in the Eastern District of Pennsylvania, did knowingly, wilfully and unlawfully procure and suborn Pantelis S. Pahides, also known as Peter S. Pahides, to commit perjury in connection with a proceeding being conducted pursuant to statute by an agency of the United States, to wit: the Immigration and Naturalization Service, and in a case in which the law of the United States authorized an oath to be administered, in that said defendant, GEORGE B. PETITE, did knowingly, wilfully and unlawfully cause, induce and procure Pantelis S. Pahides, also known as Peter S. Pahides, to falsely testify, declare and depose on April 25, 1952, at Philadelphia in the Eastern District of Pennsylvania, before Hilary R. Zaepfel, an officer of the Immigration and Naturalization Service, duly authorized

by law to administer an oath and take testimony, to the following facts and statements, all material to the proceedings then and there being conducted;

> that in January 1920, on St. John's Day, he attended the christening of a child born to George Sitaras and Mary Sitaras, at their home in Chester, Pennsylvania; that the child was named John; that he and others brought the clergyman from Philadelphia to officiate at the christening; that John Pappas, Nick Voumas, Michael Sitaras and others attended the baptismal ceremony;

all of the foregoing statements and testimony of Pantelis S. Pahides, also known as Peter S. Pahides being false, fictitious and fraudulent, the said Pantelis S. Pahides, also known as Peter S. Pahides then and there knowing same to be false, fictitious and fraudulent; and defendant, GEORGE B. PETITE, then and there knew and believed statements and testimony, when made, would be false, fictitious and fraudulent, and then and there knew and believed that said Peter S. Pahides, also known as Peter S. Pahides, would wilfully and corruptly make and give said false, fictitious and fraudulent statements and testimony; all in violation of Title 18, U.S.C Section 1622.

COUNT II.

The Grand Jury further Charges:

That beginning on or about February 8, 1952, and at divers times thereafter and theretofore, the defendant, GEORGE B. PETITE, in the Eastern District of Pennsylvania, did knowingly, wilfully and unlawfully procure and suborn Louis Sitaras to commit perjury in connection with a proceeding being conducted pursuant to statute by an agency of the United States, to wit: the Immigration and Naturalization Service, and in a case in which the law of the United States authorized an oath to be administered, in that said defendant, GEORGE B. PETITE, did knowingly, wilfully and unlawfully cause, induce and procure Louis Sitaras to

falsely testify, declare and depose on April 25, 1952, at Philadelphia in the Eastern District of Pennsylvania, before Hilary R. Zaepfel, an officer of the Immigration and Naturalization Service, duly authorized by law to administer an oath and take testimony, to the following facts and statements, all material to the proceeding then and there being conducted;

> That in January 1920, defendant, Louis Sitaras, attended a christening of the son of George and Mary Sitaras; that said son was christened John; that the clergyman who presided at the christening came from Philadelphia, Pennsylvania; that said christening occurred at the Sitaras family home, McDowell Street, Chester, Pennsylvania; that said christening was attended by Gus Katsaras, Pantelis S. Pahides, also known as Peter S. Pahides and John C. Pappas;

all of the foregoing statements and testimony of Louis Sitaras being false, fictitious and fraudulent, the said Louis Sitaras then and there knowing same to be false, fictitious and fraudulent; and defendant, GEORGE B. PETITE, then and there knew and believed statements and testimony, when made, would be false, fictitious and fraudulent, and then and there knew and believed that said Louis Sitaras would wilfully and corruptly make and give said false, fictitious and fraudulent statements and testimony; all in violation of Title 18 U.S.C. Section 1622.

COUNT III.

The Grand Jury further Charges:

That beginning on or about February 8, 1952, and at divers times thereafter and theretofore, the defendant, GEORGE B. PETITE, in the Eastern District of Pennsylvania, did knowingly, wilfully and unlawfully procure and suborn Gustav Katsaros to commit perjury in connection with a proceeding being conducted pursuant to statute by an agency of the United States, to wit; the Immigration and

Naturalization Service, and in a case in which the law of the United States authorized an oath to be administered, in that said defendant, GEORGE B. PETITE, did knowingly, wilfully and unlawfully cause, induce and procure Gustav Katsaros to falsely testify, declare and depose on April 25, 1952, at Philadelphia in the Eastern District of Pennsylvania, before Hilary R. Zaepfel, an officer of the Immigration and Naturalization Service, duly authorized by law to administer an oath and take testimony, to the following false and statement, all material to the proceeding then and there being conducted;

> that George Sitaras and his wife, Mary Sitaras, living on McDowell Avenue, Chester, Pennsylvania, had a baby boy born in December, 1919; that this boy was christened at home in January 1920; that the said Gustav Katsaros resided next door to George and Mary Sitaras on McDowell Avenue, Chester, Pennsylvania; that said Gustav Katsaros attended the christening; that the clergyman who presided at the christening was brought from Philadelphia by Mr. Pahides, that attending the christening were Pantelis S. Pahides, also known as Peter S. Pahides, Louis Sitaras, John Pappas and Nick Voumas; that he identified the subject of the deportation proceedings who was present before him as being the same person who was born in Chester, Pennsylvania in January, 1920 to George Sitaras and his wife, Mary Sitaras;

all of the foregoing statements and testimony of Gustav Katsaros, being false, fictitious and fraudulent, the said Louis Sitaras then and there knowing same to be false, fictitious and fraudulent; and defendant, GEORGE B. PETITE, then and there knew and believed statements and testimony, when made, would be false, fictitious and fraudulent, and defendant, GEORGE B. PETITE, then and there knew and believed statements and testimony, when made, would be false, fictitious and fraudulent, and then and there knew and believed that said Gustav Katsaros would wilfully and corruptly make and give said false, fictitious and fraudu-

lent statements and testimony; all in violation of Title 18 U.S.C. Section 1622.

True Bill

Foreman.

W. WILSON WHITE,
United States Attorney.

By G. CLINTON FOGWELL,
Assistant U. S. Attorney.

August 30, 1954.

PROCEEDINGS AT CLOSE OF PHILADELPHIA CASES

In the United States District Court for the Eastern District of Pennsylvania

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Criminal No. 17933

United States of America

v.

Gustav Katsaros

Criminal No. 17934

United States of America

v.

Gustav Katsaros, Pantelis S. Pahides, also known as Peter S. Pahides, Georgios Kostatos, also known as George Modestos Kostatos, George Petite, Louis Sitaras, of Marcus Hook, Pa., Louis Sitaras, of Baltimore, Md.

Criminal No. 17945

United States of America

v.

Pantelis S. Pahides, also known as Peter S. Pahides

Criminal No. 17946

United States of America

v.

George B. Petite

Criminal No. 17950

United States of America

v.

Louis Sitaras

Philadelphia, Pa., November 10, 1955.

Before Hon. Allan K. Grim, J.

Present:

W. Wilson White, Esq., United States Attorney, by Robert J. Spiegel, Esq., representing United States of America.

Lena L. Orlow, Esq., representing Gustav Katsaros, Pantelis S. Pahides, Louis Sitaras of Marcus Hook, Pa.
John B. Brumbelow, Esq., representing George Petite.

Francis E. Marshall, Esq., representing Louis Sitaras of Baltimore, Md.

Edmund DePaul, Esq., representing Georgios Kostatos.

(Mr. Spiegel) I would like to add two things, sir. First of all, the wholehearted cooperation of the three defendants before Your Honor at this moment I think was evident from the witness stand by Your Honor during trial and doesn't need to be pressed further.

I do wish to add one other thing. I have here to hand to Your Honor four motions — five motions all together — but four of them are pertinent at this moment in indictment against Gustav Katsaros, No. 17933, making false statements to an agency of the United States. I have a motion to dismiss that indictment.

As to Indictment 17945 against Peter Pahides, I have also a motion on that indictment to dismiss it.

And on 17950, Louis Sitaras, that is the Louis Sitaras of Marcus Hook.

Now, the purpose in moving the Court to grant this motion is stated in the motion itself. For the record, sir, I would like to read it.

> "My reasons for moving for the dismissal are that the defendant pled guilty in each case to subject charge, as well as charge of conspiracy to make false statements to the United States Department of Immigration and Naturalization Service. It is believed that the aforesaid conspiracy charge, under Criminal No. 17934, is an adequate basis upon which a substantial sentence can be imposed."

(The Court) Don't you mean 17933?

(Mr. Spiegel) 17934 is the conspiracy, sir, so that my motion is addressed to 17933, 17945 and 17950.

(The Court) Those indictments may be dismissed, of course.

(Mrs. Orlow) May the record show that the plea of guilty has been withdrawn.

(Mr. Spiegel) In connection with 17934 as to these three defendants that Your Honor is presently considering, I have a motion and I would request actual granting of it to dismissal of Count 2 of that indictment in view of the fact that Count 1 was elected by the government at the time of trial.

(The Court) Very well. Count 2 of Indictment 17934 may be dismissed.

(Mr. Spiegel) And the plea as to that count will be withdrawn, then. The record may show that, I guess.

(Mr. Spiegel) Now, sir, in this matter there was an Indictment No. 17946 charging this defendant with subornation of perjury, and for the reasons stated in the prior motion as to the other defendants, we will move for the dismissal of the subornation of perjury indictment, the defendant having pled nolo contendere to Count 1 of the conspiracy indictment, which in substance leaves just Count 1 as to this defendant and the conspiracy indictment also.

(The Court) Mr. Spiegel, I think it might be well if you would state why you are moving for the dismissal of the subornation of perjury indictment.

(Mr. Spiegel) Well, the reason I believe is stated on there, sir. The reason is simply this, that the defendant pled nolo contendere to the Count 1 of the conspiracy indictment 17934 and the government believed that the penalty provided by that count and under that act, conspiracy to submit false statements, was adequate and formed a sufficient basis for the Court to impose a sentence commensurate with the offenses charged.

(The Court) Wasn't there also grave doubt in your mind as to whether you could sustain your position?

(Mr. Spiegel) Certainly. There was certainly a great question as to the ability of the government to sustain its position on the perjury charge.

I don't know whether there is anything else I can add in the matter, sir. Your Honor, of course, tried the case.

MOTION TO DISMISS INDICTMENT

(Filed November 10, 1955)

In the United States District Court for the Eastern District of Pennsylvania

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No. 17946

Violation: Subornation of perjury 18 U. S. C. 1622.

United States of America
v.
George B. Petite

AND NOW, to wit: this 10th day of November, A. D., 1955, comes W. WILSON WHITE, United States Attorney in and for the Eastern District of Pennsylvania, and moves your Honorable Court to dismiss the Indictment in the above-entitled case, and, in support of his Motion avers as follows:

(1) On or about August 31, 1954, the Grand Jury for the Eastern District of Pennsylvania indicted the Defendant in the above-entitled case.

(2) My reasons for moving for dismissal are: Defendant plead nolle contendere to criminal number 17934 charging conspiracy to make false statements to United States Department of Immigration and Naturalization

Service. It is believed that the aforesaid conspiracy charge is an adequate basis upon which the court can impose a substantial sentence.

By U. S. Attorney's Manual, Title 2, p. 18, paragraph (d) the Attorney General of the United States has authorized the dismissal of said Indictment.

/s/ W. WILSON WHITE,
W. WILSON WHITE,
United States Attorney.

(Filed Nov. 10, 1955)

ORDER

AND NOW, this 10th day of November, A. D., 1955, upon consideration of the within Motion, it is hereby ORDERED AND DECREED that Indictment No. 17946 against GEORGE B. PETITE, be and the same is hereby dismissed,

By the Court:
/s/ ALLAN K. GRIM, J.

DOCKET ENTRIES IN PHILADELPHIA CRIMINAL No. 17946

In the United States District Court for the Eastern District of Pennsylvania

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Criminal No. 17946

(Subornation of Perjury — Immigration & Naturalization Service)

The United States
v.
George B. Petite

1954

Aug. 31—True Bill.

Aug. 31—Motion and Order for Bench Warrant, filed. Bench Warrant exit.

Oct. 1—Bench Warrant returned: "On 9-29-54 executed" and filed.

Oct. 1—Bond of defendant in $2000. with Peerless Casualty Co., as surety, filed.

1955

Jan. 19—Plea: Not Guilty.

Jan. 20—Appearance of Rappaport and Lagakos, Esqs for Defendant filed. (17934)

Mar. 8—Appearance of Lemuel B. Schofield, Esq., for defendant, filed. (17934)

Sept. 19—Waiver by defendant of trial by jury, filed.

Sept. 19—Non-Jury trial — witnesses sworn.

Sept. 20—Trial resumed.

Sept. 21—Trial resumed.

Sept. 22—Trial resumed.

Sept. 23—Trial resumed.

Case continued — U. S. Attorney to submit Order at a later date)

Nov. 10—Motion and Order dismissing Indictment, filed.

DOCKET ENTRIES IN PHILADELPHIA CRIMINAL No. 17934

In the United States District Court for the Eastern District of Pennsylvania

Criminal No. 17934
(Conspiracy to make false statements to Immigration and Naturalization Service)

The United States
v.
Gustav Katsaros, Pantelis S. Pahides, a k a Peter S. Pahides, Georgios Kostatos, a k a George Modestos Kostatos, George Petite, Louis Sitaras; of Marcus Hook, Pa. Louis Sitaras, of Baltimore, Md.

1954

Aug. 31—True Bill.

Aug. 31—Motion and Order for Bench Warrants (6) filed. Bench Warrants (6) exit.

Oct. 1—Bench Warrant as to G. Petite returned: "On 9-29-54 executed" and filed.

Oct. 1—Bond of G. Petite in $1000. with Peerless Casualty Co., as surety, filed.

Oct. 1—Bench Warrant as to L. Sitaras returned: "On 9-29-54 executed" and filed.

Oct. 1—Bond of L. Sitaras in $1000. with Peerless Casualty Co., as surety, filed.

Nov. 12—Bond of L. Sitaras in $1,000. with New Amsterdam Casualty Co., as surety filed.

Nov. 12—Bond of Gustav Katsaros in $1,000 with New Amsterdam Casuality Co., as surety, filed.

Nov. 26—Bond of Pantelis S. Pahides in $1,000.00 with Globe Indemnity Co., as surety, filed.

Dec. 1—Bench Warrant as to Louis Sitaras returned: "On 11-3-54 executed" and filed.

Dec. 1—Bench Warrant as to G. Katsaros returned: "On 11-3-54 executed" and filed.

Dec. 22—Order of Court granting Georgios Kostatos leave to sign own bond in $1000. filed.

Dec. 22—Bond of Georgios Kostatos in $1000. without surety, filed.

1955

Jan. 4—Bench Warrant as to Georgios Kostatos returned: "12-23-54 executed" and filed.

Jan. 19—Pleas: Not Guilty. (Except Georgios Kostatos)

Jan. 20—Appearance of Rappaport and Lagakos, Esqs. for George B. Petite filed.

Jan. 22—Appearance of Lena L. Orlow, Esq. for P. S. Pahides filed.

Jan. 22—Appearance of Lena L. Orlow, Esq. for L. Sitaras, filed.

Jan. 22—Appearance of Lena L. Orlow, Esq. for G. Katsaros, filed.

Feb. 16—Pleas as to Louis Sitaras of Marcus Hook, Gustav Katsaros and Peter S. Pahides — changed to Guilty.

Feb. 16—Plea: George Kostatos pleads Guilty.

Mar. 8—Appearance of Lemuel B. Schofield, Esq., for Geo. Petite, filed.

Mar. 23—Transcript of plea of G. Kostatos, filed.

Mar. 23—Transcript of pleas of L. Sitaras, et al, filed.

May 24—In open Court: defendants Peter Pahides, Louis Sitaris and Gustav Katsaros permitted to post new bond with new surety.

Corporate surety on old bonds exonerated upon posting of new bonds.

May 24—Bond of Peter Pahides in $1000. with surety, filed.

May 24—Bond of Louis Sitaris in $1000. with surety, filed.

May 24—Bond of Gustav Katsaros in $1000. with surety, filed.

Jun. 13—Appearance of F. E. Marshal, Esq., for defendant L. Sitaras (of Baltimore, Md.) filed.

Jun. 15—Bench Warrant returned as to P. S. Pahides: "On 11/22/54 executed" and filed.

Sept. 19—Plea as to Louis Sitaras of Baltimore, Md. changed to Guilty.

Sept. 19—Waiver by George Petite of trial by jury, filed.

Sept. 19—Non-Jury Trial (As to George Petite)—

Government elects to proceed on Count No. 1 only—

Count No. 2 dismissed.

Witnesses sworn.

Sept. 20—Trial resumed.

Sept. 21—Trial resumed.

Sept. 22—Trial resumed.

Sept. 23—Trial resumed.

Defendant changes plea on Count No. 1 of this Indictment to Nolo Contendere by leave of Court.

Sept. 27—Transcript of plea as to L. Sitaras of Baltimore, filed.

Sept. 27—Transcript of plea as to George Petite, filed

Oct. 4—In open Court: Government moves for sentence. Character witnesses sworn — sentence deferred.

Nov. 10—Motion and Order dismissing Count No. 2 of Indictment, filed.

Nov. 10—Sentences:

As to Gustav Katsaros: Co. No. 1 — Fine $300. Probation one year. Fine to be paid during probation period as a condition of probation.

Plea of Guilty withdrawn as to Count No. 2.

As to Louis Sitaras (of Marcus Hook) — Co. No. 1 — Fine $300. Probation for one year. Fine to be paid during probation as a condition of probation.

Plea of Guilty withdrawn as to Count No. 2.

As to Pantilis S. Pahides: Co. No. 1 — Fine $300. Probation for one year — Fine to be paid during probation period as a condition of probation.

Plea of Guilty as to Count No. 2 withdrawn.

As to Louis Sitaras of Baltimore, Md.: Count No. 1. Fine $300. Probation for one year. Fine to be paid during probation period as a condition of probation.

Plea of Guilty as to Count No. 2 withdrawn.

As to Georgios Kostatos: Co. No. 1 — Imprisonment for 2 months.

Plea of Guilty as to Count No. 2 withdrawn.

As to George Petite: Co. No. 1 — Fine $500. and stand committed, and Imprisonment for 2 months. (Sentence to commence Dec 12, 1955)

Nov. 14—Judgment and Commitment as to G. Katsaros, filed. cc exit.

Nov. 14—Judgment and Commitment as to P. S. Pahides, filed. cc exit.

Nov. 14—Judgment and Commitment as to G. Kostatos, filed. 2cc exit.

Nov. 14—Judgment and Commitment as to George Petite, filed. 2cc exit.

Nov. 14—Judgment and Commitment as to L. Sitaras of Marcus Hook, Pa., filed. cc exit.

Nov. 14—Judgment and Commitment as to L. Sitaras of Baltimore, Md., filed. cc exit.

Nov. 14—Transcript of sentences, filed.

1956

Jan. 11—Commitment as to Geo. Petite returned: "On 12-12-55 delivered" and filed.

Jan. 11—Commitment as to Georgios Kostatos returned: "On 11-10-55 delivered" and filed.

GOVERNMENT EXHIBIT NO. 1

File: A9 757 141 T

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Baltimore 2, Maryland

WARRANT HEARING

Warrant No. A9 757 141

Date:	February 14, 1952 (1:00 P.M.)
Place:	303 Post Office Building, Baltimore 2, Maryland
Deportation examiner:	John V. Carney
Examining Officer:	Leon W. Lehem
Secretary:	Dena Bores
Interpreter:	Mrs. Cornelia Rogers
Counsel:	George B. Petite, Esquire 214 East Lexington Street Baltimore 2, Maryland

IOANIS GEORGIOS SITARAS
aka
JOHN GEORGE SITARAS
JOHN GEORGE SETARAS
alias
GEORGIOS MODFSTOU KOSTATOS
GEORGIOS KOSTATOS RESPONDENT

Deportation Examiner to Examining Officer:

Q. What is the nature of this proceeding? A. Expulsion proceedings against the respondent on the charge set forth in the executed Warrant of Arrest, which I now hand to you pursuant to the notice of hearing served on the respondent and his counsel, which I also hand to you.

Deportation Examiner to Respondent:

Q. Are you able to speak and understand the English language? A. (By Counsel) He does not.

Deportation Examiner to Respondent through Interpreter:

Q. What language are you fully conversant in? A. Greek.

Deportation Examiner to Interpreter:

Q. Will you please stand and raise your right hand? (Complies.) Do you solemnly swear that you are competent to interpret in the English and Greek languages, and that you will truthfully interpret from English into Greek and from Greek into English such questions and answers as may be propounded during the course of this hearing, so help you God? A. I do.

Deportation Examiner to Respondent through Interpreter:

Q. If, at any time, you fail to fully understand the interpreter, you should make that fact known to me at once. Do you understand? A. I will.

Q. What is your true and correct name? A. IOANNIS GEORGIOS SITARAS.

Q. Are you, or have you ever been known by any other name or names? A. GEORGIOS MODESTOU KOSTATOS.

Q. Will you please stand and raise your right hand? (Complies.) Do you solemnly swear that all the statements you are about to make at this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God? A. I do.

Q. The documents at hand indicate that George B. Petite, Attorney-At-Law, 214 East Lexington Street, Baltimore, Maryland, is representing you in this case. Is that correct? A. Yes.

Deportation Examiner to Examining Officer:

Q. Does the file reflect that George B. Petite has filed formal Notice of Appearance in this case? A. Yes.

Deportation Examiner to Counsel;

Q. Are you prepared and ready to proceed with the hearing in this case at this time? A. Yes, sir, I am.

Q. You are advised that you have the right to offer evidence to meet any evidence presented or adduced by the Government; to cross-examine witnesses, if there are any, and to make objections for the record. Oral argument, however, in support of objections, will be excluded from the record but may be submitted in the form of a brief to accompany the record. Do you fully understand that procedure? A. Yes, sir, I do.

Deportation Examiner to Counsel and to Respondent through Interpreter:

Q. I offer for your inspection Warrant of Arrest. No. A-9757141, issued on October 24, 1951, by the District Director, Immigration and Naturalization Service, Baltimore, Maryland, for the arrest of one JOHN GEORGE SETARAS alias GEORGIOS KOSTATOS. Are you the person named in this Warrant of Arrest, and were you furnished with a copy of this document at time of service? (Interpreter reads Warrant of Arrest to respondent.) A. Yes.

Q. I also show you copy of form letter I-226, dated February 6, 1952, addressed to Mr. JOHN GEORGE SETARAS alias GEORGIOS KOSTATOS, 3814 Northern Parkway, Baltimore 6, Maryland, advising him of time and place of hearing in this case. Endorsement on this letter shows that a copy was furnished Mr. George B. Petite, Attorney-At-Law, 214 East Lexington Street, Baltimore 2, Maryland. Are you the person referred to therein, and did you receive the original of this letter? (Interpreter reads letter to respondent.) A. Yes.

Deportation Examiner to Respondent through Interpreter:

Q. You are charged in this proceeding with being in the United States in violation of law, in that, at the time of your entry at Baltimore, Maryland, on October 12, 1951, you came here with the intention of remaining permanently therein, but you were not in possession of a valid immigration visa as required of immigrants in general, nor were you exempted from the presentation of such document by the Immigration Act of May 26, 1924 or regulations made thereunder. Do you fully understand the nature of this charge? A. I do.

Deportation Examiner:

Copy of Warrant of Arrest and form letter I-226 will be entered in evidence and identified in the record as Exhibits 1 and 2, respectively.

Deportation Examiner to Respondent through Interpreter:

Q. You are informed that this hearing is for the purpose of enabling you to show cause, if any, why you should not be deported from the United States on the charge stated in the Warrant of Arrest, which has been explained to you through the interpreter. Do you understand? A. Yes.

Q. Form letter I-226 was addressed to you at 3814 Northern Parkway, Baltimore, Maryland, but information received from your counsel indicates you have changed your address. Is that correct? A. Yes.

Q. Where are you now residing? A. 805 West 36th Street, Baltimore, Maryland.

Deportation Examiner to Examining Officer:

You may proceed with the examination.

Examining Officer to Respondent through Interpreter:

Q. Did you make a sworn statement before an officer of the Immigration and Naturalization Service, Baltimore, Maryland, on October 23, 1951? A. Yes.

Q. I offer to you and your counsel for inspection a sworn statement made by JOHN GEORGE SETARAS alias GEORGIOS MODESTOU KOSTAIOS before Acting Immigrant Inspector W. H. Phillips, at Baltimore, Maryland, on October 23, 1951. I will have the interpreter read this statement to you. After she does so, please state whether the answers contained therein are true and correct as made by you at that time? (Interpreter shows statement to respondent and reads it to him. Counsel also reads the statement.) A. Question 27, "Where are your parents now?" That was a wrong answer; maybe the interpreter, at that time, made a mistake.

Q. If he made a mistake, what was your answer at that time? A. I don't know where my parents are.

Q. Did you, at that time, state that both of your parents were dead? A. Sure.

Q. At that time, did you state that both of your parents had died in the United States? A. Yes.

Q. At that time, did you state that your mother died before your father died? A. Yes.

Q. At that time, did you state that you did not know where either of them had died? A. Yes.

Q. Then, the only correction you are making is that relative to the time of their death. Is that correct? A. Yes, because I don't know when they died.

Examining Officer to Interpreter:

You may go on now. (Interpreter resumes reading statement to respondent.)

Q. Question 41. "Have you any blood relatives in the United States?" A. I have one brother and one sister that I did not get in touch with them yet. My brother's name is Kosta, my sister's name is Irene.

Q. How do you explain the answer that is given here? "I have two brothers, Nick and Eleftherios, Nick is about one year younger than I, and Eleftherios is about one year younger than Nick." A. I never said "Nick". I said "Kosta."

I have no brother called "Eleftherios". I never said that. I have no brother by that name.

(Interpreter continues reading statement to respondent.)

A. Question 42, "How did it happen that your parents left you in Greece when you were only four or five years old, but took the other two boys back to the United States with them?" I did not make the answer as shown there. What I did say was that my parent send me to Greece and kept my brother and sister over here.

Q. The question you were asked at that time was the reason why your parents left you in Greece, and the answer you have given today does not set forth any reason, whereas, the answer given the question, "How did it happen that your parents left you in Greece when you were only four or five years old but took the other two boys back to the United States with them?" calls for a reason. How do you explain this? A. I was sick. I had asthma, and my parents sent me to Greece, and they said if I don't go to Greece at that time, I would have died here.

Q. Why didn't you tell that to the Immigration officer at that time? Your answer is recorded as "I don't know." A. They didn't ask me.

Q. The question is there, "How did it happen?" A. I told it to the interpreter at that time — that was the reason that my grandfather told me, that I was sick.

(Interpreter concludes reading statement to respondent.)

A. That was the statement I made on October 23 and 24, 1951, with the exceptions I have noted.

Q. Is this your signature on page 1 of the statement we just read to you? A. Yes.

Q. Are those your initials on page 2 of the same statement? Did you make those initials? A. Yes.

Q. Did you write your initials on page 3 of this statement, as shown here? A. Yes.

Q. Is that your signature on page 4 of this statement that was read to you? A. Yes.

Q. I call your attention to the fact that it is stated, immediately preceding your signature, that "I have heard read the foregoing statement in the Greek language consisting of 4 pages and solemnly swear that it is a true and correct record of the statements made by me on this day and that all the statements are true and correct." The signature of the interpreter, Anestes Kampos, also appears on this statement. A. Yes, we both signed.

Q. Before you signed this statement, did the interpreter read back to you the questions and answers contained in the statement? A. Yes.

Q. Then, how can you state today that all of the answers contained in this statement were not made by you? A. I was all upset, and I did not pay much attention to the interpreter.

Q. At the time the interpreter read that statement back to you, did you ask him to correct any of your answers? A. I only added the name of my mother — "Maria."

(Note: Page 1 shows the name of "Maria" added to the mother's name in answer to Question 6.)

Examining Officer to Deportation Examiner:

I offer the aforementioned sworn statement in evidence.

Deportation Examiner:

Sworn statement made by JOHN GEORGE SETARAS at Baltimore, Maryland on dates of October 23, 1951 and October 24, 1951 will be entered in evidence and identified in the record as Exhibit 3.

By Counsel:

I would like to take exceptions now, because I think there are discrepancies in this record which ought to be corrected.

By Deportation Examiner:

If counsel wanted to make objections to the statement being entered in evidence, that objection should have been stated immediately subsequent to the Examining Officer offering said statement in evidence.

By Counsel:

Exceptions.

Examining Officer to Counsel and to Respondent through Interpreter:

Q. I offer to you and your counsel for inspection form I-405, dated October 23, 1951, showing that GEORGIOS KOSTATOS was admitted at the port of Baltimore, Maryland, October 12, 1951, as an alien seaman. Does this certificate of arrival relate to you? A. Yes.

Q. With that name? A. I used that name from Greece to come over here.

Q. As a matter of fact, isn't your correct name GEORGIOS KOSTATOS? A. No, my name is JOHN GEORGE SITARAS.

Q. At the time you were questioned by the U. S. Immigration officer at Baltimore, on October 12, 1951, did you make any claim to United States citizenship? A. No.

Q. Why didn't you, if you are a citizen of the United States? A. They didn't ask me, so I didn't say anything.

Q. At the time you signed on this vessel, did you give your citizenship as Greece? A. They don't ask us things like that.

Q. Then, how do you account for the fact that this certificate of arrival shows your nationality as Greek? A. It was taken from my seaman's book which shows Greek nationality, but I used the fictitious name of GEORGIOS KOSTATOS.

Examining Officer to Deportation Examiner:

I offer this Certificate of Arrival of Alien Seaman in evidence.

By Counsel:

No objections.

Deportation Examiner to Respondent through Interpreter:

Q. This certificate of arrival was issued in the name of GEORGIOS KOSTATOS. Is that the name you used on entry into the United States? A. Yes, from Greece to come to the United States.

Deportation Examiner:

Form I-405 will be entered in evidence and identified in the Record as Exhibit 4.

Examining Officer to Counsel and to Respondent through Interpreter:

Q. I offer to you and your counsel for inspection, and will have the interpreter read to you, a report submitted by the Philadelphia office of the Immigration and Naturalization Service, dated November 2, 1951. This is a report of investigation conducted in an effort to determine whether you were born in the United States as claimed. (Interpreter reads document to respondent and counsel examines a copy of the document.) Do you have any comment you wish to make relative to this report that was just read to you by the interpreter? A. (By respondent) Yes, I have to tell you that I am JOHN GEORGE SITARAS. Maybe there are too many Sitaras. This does not refer to me.

Q. You understand, however, that an effort was made by our Philadelphia office to determine whether you were born in the United States? A. Yes.

Examining Officer to Deportation Examiner:

I offer this report of November 2, 1951 in evidence.

By Counsel:

We have no objection.

Deportation Examiner:

Report dated November 2, 1951, will be entered in evidence and identified in the record as Exhibit 5.

Examining Officer to Counsel and to Respondent through Interpreter:

Q. I offer to you and your counsel for inspection, and will have the interpreter read to you, a report dated January 3, 1952, submitted by the Philadelphia office of the Immigration and Naturalization Service, showing that the Bureau of Vital Statistics, Harrisburg, has no record of the birth of a JOHN GEORGE SITARAS or SETARAS in Chester or Upland, Delaware County, Pennsylvania. (Interpreter reads document to interpreter.) Do you have any comment you wish to make? A. (By Counsel) No comments or objections.

Examining Officer to Deportation Examiner:

I offer this report of January 3, 1952 in evidence.

Deportation Examiner:

Report submitted to the Chief, Investigation and Deportation Section, Immigration and Naturalization Service, Philadelphia, Pennsylvania, dated January 3, 1952, will be entered in evidence and identified in the record as Exhibit 6.

Examining Officer to Respondent through Interpreter:

Q. Have you left the United States at any time since your arrival at Baltimore on October 12, 1951? A. No.

Q. Have you ever been admitted to the United States for permanent residence? A. No.

Examining Officer to Deportation Examiner:

No further questions at this time.

Deportation Examiner to Counsel:

You may examine.

Counsel to Respondent through Interpreter:

Q. Now, Mr. Sitaras, at the time you made this sworn statement, were you represented by an attorney? A. No.

Q. Did anyone advise you of your right to representation by counsel at that time? A. No.

Q. There was an interpreter here at this time? A. Yes.

Q. Do you understand the English language? A. No.

Q. Then, you do not know whether or not the interpreter correctly interpreted your answers. Is that correct? A. I don't know what he was saying in English.

Q. And, if there are any mistakes or any discrepancies made in that statement, you would not know? A. No, I don't know it.

Q. Now, in this question, you said that you have voted in Greece. Will you kindly explain to the Examining Officers here under what circumstances you voted? A. They asked me to replace my grandfather.

Q. Was this vote by proxy or by an individual vote? A. They called me to vote for my grandfather and not for myself.

Q. Now, will you tell this gentleman where you were born? A. In the United States.

Q. When and where? A. My grandfather told me that I was born in 1919 or 20; anyway, I was baptized in 1920 in Philadelphia, but I was born in the United States — I don't know where.

Q. Have you heard the city that you were born? A. I was baptized in Philadelphia. My father lived in Chester but, where I was born, I don't know. I know that I was baptized in Philadelphia.

Q. Do you know where your parents were living at the time of your birth? A. In Chester.

Q. Now, what was your father's name? A. Georgios Sitaras.

Q. What was your mother's name? A. Maria Spanos Sitaras.

Q. Now, how old were you when you were taken to Greece? A. I can't recall — four or five years old.

Q. Now, who took you to Greece? A. My uncle.

Q. What was his name? A. Kostas Sitaras.

Q. Now, where did they take you in Greece? A. To my grandfather's home in Kourounia, Chios, Greece.

Q. Now, were you registered in the school of this village, Kourounia, in Greece? A. Yes.

Q. When they register you there, were you given the place of birth Kourounia or the United States? A. I don't remember what my grandfather gave them.

Q. Why, then, did you not serve in the Greek army? A. I'm not registered in any military records.

Q. Would that only be military or general records of the town or village in Greece? A. Only in school.

Q. Now, do you know or have you heard why you were sent to Greece? What was the reason? A. They send me to Greece because I was sick. They said that I had asthma or T. B. — one of the two.

Q. Now, do you recall your parents? A. No.

Q. Now, under whose supervision you were brought up? A. My grandfather.

Q. Now, when were you told that you were born in the United States? A. When I was about eleven or twelve years old.

Q. Now, had you asked your grandfather what had happened to your mother and father in the United States? A. I always asked, but he never told me. He always said that she was O.K. and they will take me to the United States, too.

Q. Now, do you know why and what the delay was for you to return to the United States and join your parents again? A. At that time I didn't know, but I found out now that my father was separated from the mother.

Q. And, when did you find this out? A. Around ten years ago.

Q. And, have you tried to communicate with your parents while you were a young man? A. When I found out about my parents in my village, I tried to write to them but no one knew how to write the address of my parents.

Q. And, you have no correspondence at all? A. No.

Q. Now, will you explain to the Examiner why it took you so long to return to the United States? A. We had a war in Greece in 1940 and, afterwards, I tried to come to the United States.

Q. Well, why didn't you do it sooner? What happened? A. I didn't have money to come.

Q. Now, will you tell the examining gentlemen here why you used someone else's name to obtain employment in the S.S. "SANTA IRENE?" A. In order to get employment on the ship, I have to show my military discharge. My name is not in any records in Greece, so I had to use my friend's papers in order to obtain my job on that ship.

Q. And, you came to the United States under a different name than your true name? A. Yes.

By Interpreter:

I have asked Mr. JOHN SITARAS if he understands me, and he said yes.

Counsel to Respondent through Interpreter:

Q. Have you served in any country under their military forces? A. No.

Q. And, explain to these gentlemen here why you did not serve in the Greek army during the war? A. I wasn't registered in any of their records; they couldn't find me.

Q. Did you present yourself to the military authorities? A. When I was twenty-one, I attempted to volunteer in the Greek army in 1940, but they didn't call me.

Q. Why? A. Because they couldn't find my name in the records.

Q. What was your physical condition at the time? A. I felt good, but they told me I was sick. I was coughing from cigarettes.

Q. Have the doctors examined you to ascertain the sickness? A. The doctor of the village.

Q. What was the findings? Please let us have it. A. I was coughing and asthma, but I don't know what asthma is.

Q. Were those the chief reasons they did not accept you in the service? A. Yes.

Q. Did you cast a vote yourself in the election at Kourounia on September 9, 1951? A. No.

Q. Now, since you could not get communication with your parents, what other efforts have you made to communicate with your brother and sister or some other relatives A. I'm still trying. I write to every compatriot in the United States.

Q. Have you succeeded yet? A. No, not yet.

Q. From your own knowledge, tell the Examining Officer whether or not you know when and where your parents died — definitely. A. Definitely, I know that they died but where and when I don't know.

Q. And, have you been able to ascertain from others where and when they died? If you know? A. I tried to find out and other people tell me six-seven months, and other people tell me a few years. One knows for sure but they don't know where or when.

Q. Now, the uncle that took you in the other side when you were four or five years old, what was his name, you said? A. Ioanis Costas Sitaras.

Q. Do you know where he is now? A. No.

Q. Were you able to communicate with him from Greece? A. No.

Q. Have you been able to ascertain his whereabouts in the United States since you returned? A. No.

Q. Now, since your return to the United States, have you visited Chester? A. Yes.

Q. Have you been in Philadelphia? A. No.

Q. Have you met any people who knew your family? A. Yes.

Q. Now, did some people tell you that they remember your family? A. Yes.

Q. Did they tell you whether or not they remember you? A. Other people say that they remember me, and other people say that they don't.

Q. Now, as far as you know and, from all your efforts, you have not been able to contact your brother and sister or any people that know as to whereabouts they are now. Is that right? A. No.

Q. Now, have you ever been convicted of any crime, felony, or misdemeanor? A. No.

Q. Do you belong to any union or any association that teaches the overthrow of organized democratic form of government? A. No — no place.

Q. What your religious faith or affiliations? A. Greek Orthodox — Christian.

Q. Can you state definitely whether you know the particular date on which you were born? A. I was informed that I was born December of 1919. I don't know whether they put me in January, or what.

Q. Have you been informed, also, when you were christened or when you were baptized? A. I was informed that I was baptized in Philadelphia.

Counsel to Deportation Examiner:

I offer this affidavit of Louis Sitaras, executed February 8, 1952. I also offer the affidavit of Peter S. Pahides, executed on the 8th day of February, 1952. I also offer the affidavit of Gus Katsaros, executed on the 11th day of February, 1952.

Deportation Examiner to Examining Officer:

Q. Has the Examining Officer had an opportunity to examine these? A. No, I would like to examine these documents.

(Examining Officer reads documents.)

Examining Officer to Deportation Examiner:

I object to the introduction of these affidavits because, first of all, there is nothing in them to indicate that the child who was baptized in Philadelphia in January 1920 is the respondent. I further object because I believe the Government should have an opportunity to cross-examine the makers of these affidavits.

Deportation Examiner to Counsel:

Q. Will counsel agree to present the makers of these affidavits for cross-examination? A. Yes, if they would appear, but I would prefer depositions be obtained by your Philadelphia office.

Deportation Examiner to Examining Officer:

Q. Does the Examining Officer agree to depositions being obtained regarding the makers of these three affidavits? A. Yes, provided that the respondent also appears in the Philadelphia office for identification purposes.

Deportation Examiner to Counsel and Examining Officer:

The objection of the Examining Officer is sustained, and affidavits will not be entered in evidence until such time as the respondent and makers of the aforesaid affidavits

appear at the Immigration and Naturalization office, Philadelphia, Pennsylvania, for the taking of depositions.

Deportation Examiner to Counsel:

Q. Has counsel completed his examination for the present? A. For the present.

Deportation Examiner to Examining Officer:

Q. Does the Examining Officer desire to further interrogate the respondent? A. Yes.

Examining Officer to Respondent through Interpreter:

Q. On October 23, 1951, you stated that, definitely, you were born in Chester, Pennsylvania, U. S. A. Today, you stated that you do not know where you were born in the United States. How do you explain this discrepancy. A. I didn't understand the question and I didn't understand the interpreter. If I said I was born in Chester, it was in Chester.

Q. What interpreter do you mean? A. The first time I was questioned. Now, I understand everything.

Q. The interpreter read back to you your statement of October 23, 1951 and you agreed that, on that date you stated that you were born in Chester, Pennsylvania. Yet, today, you stated you do not know where you were born. How do you explain this? A. I was born there.

Q. Is it not true that you are now offering the present explanation because of the fact that you were born in Greece? A. No, I was not born in Greece. If I was born in Greece, you could find my name in the Greek records, but you can't find my name in the Greek records.

Q. Have you ever had or seen any documentary evidence to show that you were born in the United States? A. No.

Q. On October 23, 1951, you stated that you voted in the general election at Kourounia, Chios Island, Greece, on September 9, 1951, and this was an election for the Congress

and Prime Minister of Greece. Will you explain exactly in what manner you voted? A. I was staying in my home — no one asks me to vote. The old men of the village called me and asked me why shouldn't I vote for my grandfather, so, for the first time, I voted.

Q. Did this old man force you to vote? A. Well, my father-in-law asked me to.

Q. Did anyone force you to vote, I am asking you? A. They didn't beat me to go there but they asked me and asked me and made me go.

Q. In what way did they make you go? Did they take you forcibly? A. I was sitting down and they grabbed me and they took me there — to the polls.

Q. What would they have done to you, if you had not voted? A. I don't know. They wouldn't have left me come to the States.

Q. What does your voting have to do with you coming to the United States? A. The party.

Q. Did anyone threaten you with bodily harm in the event you did not vote in this election? A. Yes.

Q. They threatened you? What did they say to you? A. They would beat me, but not in my village.

Q. Do you realize that you are under oath to tell the truth? A. Of course. I am not going to lie.

Q. Did anyone threaten to beat you if you did not vote in this election? A. Yes.

Q. Who threatened you? A. The president of the village.

Q. What is his name? A. Giorgios Michalos.

Q. What did he say to you? A. He told me that if I don't vote for my grandfather, "we will do anything we want with you over here."

Q. What is his address? A. Kourounia, Chios Island, Greece.

Q. Did you cast a ballot in this election? A. Yes.

Q. Where did you cast your ballot. In what place? A. Like a mail box and that is where we put our votes..

Q. Did you leave your home in order to go to a voting place in Kourounia? A. Yes. Inside the school which is near my home.

Q. Why did you state before that, when you voted, you didn't even leave your home? A. My home and the school is very close.

Q. When you cast your ballot, did you vote for Congressmen and the Prime Minister of Greece? A. No.

Q. Then, why did you state on October 23, 1951, that you voted in the general election at Kourounia, Chios Island, Greece, on September 9, 1951? A. I voted in my grandfather's name for Papagos.

Q. For what office? A. Prime Minister of Greece?

Q. Did you vote for any other officials? A. No.

Q. And you exercised your own discretion in voting for this candidate for the Prime Minister of Greece. Is that correct? A. Yes.

Q. Did you have to sign his ballot? A. We don't sign.

Q. Then, no one knew exactly how you voted. Is that correct? A. No one knew how I voted.

Q. Then, if you felt that you had been forced to go to the polling place, why didn't you cast a blank ballot, in view of the fact that it was a secret vote? A. Should I take the ballot in my pocket and go, and everybody else will see me?

Q. You just stated that it was a secret vote. No one would know if you cast a blank ballot or if you voted for anyone. A. I wanted to vote for my grandfather.

Q. As a matter of fact, you voted for a candidate for the Prime Minister of Greece — not for your grandfather. Is

that correct? A. In my grandfather's name I voted for the Prime Minister of Greece.

Q. But you were the one who decided beside whose name the check mark should be placed. Isn't that correct? A. I did vote for the one that I wanted, but I shouldn't have done that.

Q. Did anyone ever beat you while you were in Greece? A. No.

Q. You stated before the reason you were not called for military service in Greece was because there was no record of your name in that country. Is that correct? A. Yes.

Q. Then, why did you testify on October 23, 1951, "For one thing I had been rejected for service in the Greek Military Forces in 1940 by the Medical Officers."? A. I volunteered for military service.

Q. If you hadn't been rejected by the medical officers, you would have been accepted for service in the Greek military service. Isn't that correct? A. Yes.

Q. If you desire to make your home in the United States, why didn't you go to the American Consul in Greece instead of coming directly to the United States on the S.S. "SANTA IRENE?" A. I didn't know where to go; I never traveled outside of my village.

Q. Did you ever apply for a United States passport? A. No.

Q. Have you applied for a Greek passport? A. No.

Examining Officer to Deportation Examiner:

No further questions at this time.

Deportation Examiner to Counsel:

Q. Do you desire to further interrogate? A. Yes.

Counsel to Respondent through Interpreter:

Q. When you were to vote, whose name did you use? A. My grandfather's.

Q. What was your grandfather's name? A. Ioannis Georgiou Sitaras.

Q. And the vote you cast on that day was the vote of your grandfather, and not yours. Is that correct? A. Correct.

Counsel to Deportation Examiner:

That is all.

Deportation Examiner to Respondent through Interpreter:

Q. On October 24, 1951, you stated that the school records show that you were born in Courounia, Chios Island, Greece, and that information was obtained from your grandfather. Is that correct? A. My grandfather wrote it. I don't know what my grandfather did.

Q. Is that the statement you made? A. Yes, I said that.

Q. At that time you also stated that your grandfather told you you were born in the United States. Is that correct? A. Yes.

Q. Why would your grandfather tell the Greek authorities that you were born in Greece and tell you that you were born in the United States? A. To learn the five letters (to be admitted to school).

Q. You stated that you were unable to communicate with your parents in the United States because no one in the village knew their address. Is that correct? A. Yes.

Q. Was not the address of your parents shown on the letters received from them by your grandfather? A. Yes.

Q. Could you read and write at that time? A. No. I didn't know English.

Q. Was there not anyone in the village who could read or write to learn your parents' address in the United States? A. No. Even now, when I write in my village, I usually enclose an envelope with my return address.

Q. Why would your parents communicate with your grandfather up to the time of his death in 1941, if they did not receive any letters from him or from someone in the village, letting them know that he was still alive? A. My grandfather was communicating with my parents here.

Q. On October 24, 1951, — I read you the following question and answer made by you at that time, "Why did your Grandfather give them such information?" Answer — "He is uneducated, and told them that." If your grandfather was uneducated, how was he able to write to your parents in the United States? A. He put the teachers or anybody else to write a letter for him.

Q. How long have you resided in Baltimore, Maryland? A. Around four months.

Q. The Certificate of Arrival shows that you arrived at Baltimore, Maryland on October 12, 1951 on the S.S. "SANTA IRENE," and if you have been residing in Baltimore for about four months, then, you have been residing in that city ever since your arrival to the United States. Is that correct? A. Yes.

Q. Then, if that be so, how can you have made any efforts to obtain documentary evidence of your birth in the United States, as claimed? A. I went to Chester.

Q. How long did you remain in Chester, Pennsylvania? A. Two or three days — or two or three visits.

Q. Could any record of your birth in that city be located, as claimed? A. I haven't found any yet.

Deportation Examiner to Examining Officer and Counsel:

Q. Have you completed your examination for present? A. (Examining Officer) Yes.

(Counsel) Yes, I have.

Deportation Examiner:

Hearing will be adjourned until such time as depositions have been taken by the Immigration and Naturalization

Service, Philadelphia, Pennsylvania. Counsel will be notified of the date and time of reopened hearing.

(Hearing Adjourned 4:25 P. M.)

GOVERNMENT EXHIBIT NO. 2

APPLICATION FOR WARRANT OF ARREST

(Under Section 19 of the Act of February 5, 1917, as amended.)

Baltimore 2, Maryland

October 24, 1951

A. R. No. 9757141

Local Office File No. A9 757 141 Temp.

District Office File No. " "

Central Office File No.

Confirming telegraphic application, ( ) Yes (x) No.

The undersigned respectfully recommends that a warrant be issued under the authority of the Attorney General, for the arrest of the alien. (Show true name and aliases, if any.): JOHN GEORGE SETARAS alias GEORGIOS KOSTATOS, under the following provision(s) of the Immigration Laws. (Charges are to be shown by code word(s) and decoded text):

HELAK — The Immigration Act of May 26, 1924, in that, at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder.

This application is based on the following facts which the undersigned has carefully investigated, and which, to the best of his knowledge and belief, are true. (Here show place, date, manner of entry, nativity and present nationality, age, sex, marital status, present location, and occu-

pation): Baltimore, Md., October 12, 1951, member of crew SS SANTA IRENE, citizen of Greece (claims birth in U. S.), 31, male, married, 3814 Northern Parkway, Baltimore, Md., seaman.

The supporting evidence required by 8 CFR 150.2 is attached hereto. (Here list attachments):

Sworn statement of alien made before Patrol Inspector Phillips.

Certificate of Arrival of Alien Seaman (Form I-405).

Reviewed by:

Forwarded to Central Office:

( ) Approved.

(x) Warrant issued under 8 CFR 150 , copy attached.

JOHN L. MURFF,
District Director,
Baltimore District.

HERBERT F. MOSELEY,
Acting Chief, Inv. and Dep. Section.

GOVERNMENT EXHIBIT NO. 3 (Cont'd)

DEPORTATION EXAMINER GS-942-11

Position Number 50-F-154

With complete latitude for independent action in presiding at the hearing and in reaching a decision, the incumbent serves as a hearing officer in formal hearings in deportation proceedings pursuant to immigration laws of the United States.

The proceedings at which hearing officers in this grade preside are moderately difficult and important. They are characterized largely by (a) few complicated or controverted facts, (b) no or few protestations against proposals made, (c) moderately complex legal and technical matters, (d) simple or normal contentions and issues, (e) small records, and (f) narrow effect of decisions.

When the case has been processed thoroughly by investigators, the respondent has been taken into custody on a warrant of arrest and has been accorded certain preliminary privileges, the case is assigned to the incumbent for a hearing. The incumbent is required to administer oaths and affirmations; issue subpoenas authorized by law; receive relevant evidence, rule upon offers of proof, motions made during the course of the hearing, and upon all objections to the introduction of evidence; take or cause depositions to be taken; dispose of procedural requests including admissibility of stipulations; exercise the authority conferred by law upon the Attorney General to grant the privilege of voluntary departure and preexamination; present all available evidence bearing upon the alien's liability to deportation; conduct the interrogation of the alien and of the witness on behalf of the Government and the examination and cross-examination of the alien's witnesses; lodge additional charges against the alien in addition to those stated in the warrant of arrest, if any exist, and present evidence upon such charges in like manner as on the charges contained in the warrant of arrest; inquire thoroughly into

the alien's statutory eligibility for discretionary relief if the alien has applied for relief from deportation; consider the facts in the record and arguments and contentions, if any are made; make decisions on the basis of reliable, probative and substantial evidence in the records, and take any other action consistent with applicable provisions of law and regulations. Since the hearing officer must exercise the combined functions of a hearing officer and an examining officer, he must be able to conduct the hearing in an impartial manner so as to fully and adequately safeguard the interests of the respondent as well as those of the Government.

The incumbent shall, in order to assure a fair hearing, advise the respondent of his right to be represented by counsel or another qualified representative and, if necessary, afford the respondent an opportunity to arrange therefor. Where additional charges are lodged, the incumbent shall advise the respondent of his right to have a reasonable period of time within which to meet such additional charges, if desired. He must also determine solely within his own discretion when, within the range of permissible statutes, he will advise the respondent of the latter's privilege to apply for relief from deportation.

The incumbent shall not perform any duties inconsistent with the duties and responsibilities of an adjudicating officer and in addition to presiding at formal hearings in deportation proceedings, he shall also serve as hearing officer in hearings required to be held in carrying out other administrative functions of the Service.

The incumbent may grant such continuances of the hearing as he may deem reasonable at his own instance or upon the motion of the respondent or his counsel or representative. The hearing officer will be required to preside over more than one case at the same hearing where two or more cases involving common questions of law or fact are ordered consolidated with respect to any or all matters in issue in the cases.

In any case which he deems appropriate, the hearing officer may, at the conclusion of the hearing, state for the record in the presence of the alien or his counsel or representative, a brief summary of the evidence, findings of fact and conclusions of law, and his disposition of the case.

Except in those cases where the incumbent's decision is orally stated for the record, the incumbent shall, as soon as practicable after the conclusion of the hearing, prepare in writing a decision, signed by him, which shall set forth a summary of the evidence adduced and his findings of fact and conclusions of law as to deportability. In addition, where the respondent has applied for relief from deportation the incumbent's decision shall also contain a separate determination as to whether or not the incumbent is satisfied, on the basis of the evidence presented, as to the alien's statutory eligibility for the relief requested. The decision of the incumbent shall be concluded with a statement of his disposition of the case which shall be (1) that the alien be deported, or (2) that the warrant of arrest be cancelled, or (3) that the alien be found to have established statutory eligibility for suspension of deportation, or (4) that the alien be granted voluntary departure at his own expense in lieu of deportation with or without the additional privilege of pre-examination, or (5) that such other action be taken in the proceedings as may be required for the appropriate determination of the same.

The decisions of the hearing officer in cases involving charges other than those based on criminal, subversive, or immoral grounds, are final and not subject to review unless the alien or his counsel or representative takes exceptions thereto.

The incumbent shall conduct the hearing in a manner tantamount to a judicial trial.

In properly carrying out the duties specified above, certain other duties and responsibilities befall the incumbent. He must understand and apply the provisions of the Constitution of the United States. He must possess thorough knowledge of the pertinent provisions of the basic law and

regulations and rules of the agency issued thereunder, including past immigration laws and regulations. He must possess thorough knowledge of the pertinent Presidential Proclamations and Executive Orders, treaties with and among foreign nations, applicable regulations and the nationality and citizenship laws of the United States and foreign countries. As to these he must know or ascertain judicial and administrative precedents. He must also ascertain and apply foreign and domestic laws regarding marriage, divorce, legitimation of children, domestic relations, adoption, residence, domicile, and crimes. He must ascertain and apply local laws concerning pardon for crime as well as mere restoration of civil rights. The incumbent must understand the doctrine of *res adjudicata* and the application of domestic and foreign court decisions in the various jurisdictions when those decisions interpret or apply statutes which become involved in deportation proceedings. The application also of State department regulations is required most frequently. He must apply the appropriate laws and United States Public Health Service regulations concerning afflictions of aliens, must ascertain and apply the meaning of certain medical terms and must understand and apply various statutes relative to duty to pay for treatment obtained in public institutions.

In evaluating the evidence that has been presented, he must be able to determine whether there is sufficient to support the charges against the respondent and in so doing, he must in appropriate cases determine whether that evidence indicates that the crime for which the alien may be deported is one involving moral turpitude.

The incumbent must understand and apply all the applicable laws in such a way as to avoid embarrassment in our diplomatic relations with foreign countries and consequently must apply scrupulously all the laws and regulations applicable to foreign government officials and aliens admitted to the United States pursuant to the International Organizations Immunities Act.

The decision of the incumbent must reflect all the matters mentioned above and such other matters that may be perti-

nent in the determination of the case, and the decision must be one tantamount in quality to that of a judge sitting in a court of law.

The incumbent must have the ability to conduct hearing in a dignified, orderly and impartial manner; ability to determine credibility of witnesses; ability to sift and analyze the evidence, apply agency and court decisions, and prepare clear and concise statements of fact and law and orders. The incumbent must possess sound judgment, judicial temperament and poise.

GOVERNMENT EXHIBIT NO. 4

File: A 9 757 141 T — Baltimore

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

WARRANT HEARING, resumed on June 16, 1952, at 1:45 P. M., in Room 303, U. S. Post Office Building, Baltimore, Maryland, with the following appearances:

Hearing Officer	John V. Carney
Examining Officer	Leon W. Lehem
Stenographer	Dena Bores
Greek Interpreter	Cornelia Rogers
Counsel for Respondent	George B. Petite

IOANIS GEORGIOS SITARAS
aka
JOHN GEORGE SITARAS
JOHN GEORGE SETARAS
alias
GEORGIOS MODESTOU KOSTATOS
GEORGIOS KOSTATOS RESPONDENT

Hearing Officer to Respondent through Interpreter:

Q. Are you the same IOANIS SITARAS, in whose case hearing under Warrant of Arrest issued on October 24, 1951,

was commenced February 14, 1952, and adjourned for the purpose of having depositions of witnesses taken by officials of the Immigration and Naturalization Service, Philadelphia, Pa.? A. Yes.

Q. Will you please stand and raise your right hand? (Complies) Do you solemnly swear that all the statements you are about to make at this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God? A. I do.

Q. At hearing commenced on February 14, 1952, you were represented by George B. Petite, Attorney-at-Law. Is Mr. Petite representing you at this proceeding? A. Yes.

Hearing Officer to Counsel:

Q. Are you ready and prepared to proceed with the hearing at this time? A. Yes, sir, I am.

Hearing Officer to Interpreter:

Q. Will you please stand and raise your right hand? (Complies) Do you solemnly swear that you are competent to interpret in the English and Greek languages, and that you will truthfully interpret from English into Greek and from Greek into English, such questions and answers as may be propounded during the course of this hearing, so help you God? A. I do.

Hearing Officer to Examining Officer:

You may proceed with the examination.

Examining Officer to Hearing Officer:

I offer in evidence depositions taken at Philadelphia, Pa. on April 25, 1952, from PETER S. PAHIDES, LOUIS SITARAS, AND GUS KATSAROS, in the presence of counsel and the respondent.

Hearing Officer to Counsel:

Q. Has counsel had the opportunity to read the testimony as taken at Philadelphia on April 25, 1952? A. No, I have not the opportunity to read the testimony of the witnesses.

(Hearing Officer presents statements of witnesses to counsel.)

Counsel:

I waive the reading of it, and I have no objections to its being entered in evidence.

Hearing Officer:

Sworn statements made by one PETER S. PAHIDES, LOUIS SITARAS, and GUS KATSAROS, at Philadelphia, Pa., on April 25, 1952, will be entered in evidence and identified in the record as Exhibit 7.

Examining Officer to Respondent through Interpreter:

Q. Have you ever left the United States since your appearance at this office on February 14, 1952? A. No.

Q. At what address are you now residing? A. 805 West 36th Street, Baltimore, Maryland.

Q. Are you employed? A. Yes.

Q. By whom are you employed? A. Mr. Francos — restaurant: The New Times Inn, corner 40th Street and Roland Avenue, Baltimore, Md. I work as a waiter at $30 a week, plus $3 or $4 a week in tips.

Q. How long have you been employed there? A. Six — seven months.

Q. Have you been arrested at any time? A. Only the first time that the immigration authorities caught with me.

Q. Have you ever been arrested since that time? A. No.

Q. Are you now or have you ever been a member of the Communist Party, Fascist Party, or any other totalitarian party or totalitarian organization? A. Never.

Q. Have you ever registered with an American consul for service in the armed forces of the United States? A. No.

Q. Is that due to the fact that you are a Greek citizen? A. No.

Q. I offer for your inspection a report received from the Identification Division of the Federal Bureau of Investigation showing that JOHN GEORGE SETARAS or GEORGIOS KOSTATOS has no arrest record in the United States. Do you wish to make any comment? A. (By Counsel) No comment. We have no objections to be offered in evidence.

Examining Officer to Hearing Officer:

I offer this report in evidence.

Hearing Officer:

Federal Bureau of Investigation criminal record report will be entered in evidence and identified in the record as Exhibit 8.

Examining Officer:

No further questions.

Hearing Officer to Examining Officer:

Q. Are the depositions made by PETER S. PAHIDES, LOUIS SITARAS, and GUS KATSAROS the same persons from whom the counsel, on February 14, 1952, offered affidavits to which the Examining Officer objected? A. Yes.

Hearing Officer to Counsel:

Q. Do you still desire to offer the affidavits submitted on February 14, 1952 in evidence? A. Yes, sir, I do.

Examining Officer:

I object to the introduction of these affidavits, as I feel that the deposition fully cover the facts contained in these affidavits.

Hearing Officer:

Inasmuch as depositions were taken from the persons referred to, objection of the Examining Officer is overruled. Affidavits of PETER S. PAHIDES, LOUIS SITARAS, and

GUS KATSAROS, executed on February 8 and February 11, 1952, will be entered in evidence and identified in the record as Exhibits 9, 10, and 11.

Hearing Officer to Counsel:

You may present your case.

Counsel:

With your permission, I have a witness that is outside now, whom I would like to call in order to identify the respondent, who sits left to me.

Hearing Officer:

You may present the witness.

(Witness is called and enters.)

Hearing Officer to Witness:

Q. What is your true and correct name? A. ELEFTHERIOS SITARAS.

Q. Are you or have you ever been known by any other name or names? A. Yes, I have been known by the name of LOUIS SITARAS.

Q. Are you the same LOUIS SITARAS who executed an affidavit on February 8, 1952, and from whom a sworn statement was taken at Philadelphia, Pa. on April 25, 1952? A. No, sir.

Q. Of what country are you a citizen or subject A. United States.

Q. Where and when were you born? A. In Chios, Greece, December 17, 1915.

Q. How did you acquire United States citizenship? A. My father was a United States citizen.

Q. When and where was your father naturalized? A. In 1926 — in Media, Pa., I think.

Q. What was your father's name? A. John P. Sitaras.

Q. Do you have any documents to establish that you are a citizen of the United States, as claimed? A. Yes, I have my derivative citizenship papers.

Q. Where are they? A. I didn't bring them, but I can produce them, if required.

Q. Do you know the number of the certificate? A. No, sir.

Q. Will you please stand and raise your right hand? (Complies) Do you solemnly swear that all the statements you are about to make at this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God? A. I do.

Hearing Officer to Counsel:

Your witness.

Counsel to Witness:

Q. Mr. Sitaras, you have been known in the past as Louis Sitaras? A. Yes, sir.

Q. And, you are the son of late John Sitaras? A. Yes.

Q. Now, when you say the word "late," what happened to your father? A. He died last year.

Q. Where did he die? A. Here, in Baltimore.

Q. On what date? A. May 16, 1951, in the Church Home Hospital.

Q. Now, was he buried in Baltimore City? A. In the city — in the Greek Cemetery in Woodlawn.

Examining Officer:

I object. I see no point to the line of questioning pursued by counsel.

Counsel:

I wish to lay a foundation.

Hearing Officer to Counsel:

Q. What is the nature of the foundation you expect to lay by that line of questioning? A. Insofar as relationship between the respondent and the witness.

Hearing Officer to Counsel:

It appears that counsel is asking about the death of the witness' father, which does not appear to have any relationship, and the Examining Officer's objection will be sustained.

Counsel:

Exceptions.

Counsel to Witness:

Q. Mr. Sitaras, where were you born? A. Chios, Greece.

Q. Are you related to the respondent who sits here? A. I may be through my great-grandfather, but I don't know.

Q. You were born in Greece? A. Yes, sir.

Q. When did you emigrate to the United States? A. October 4, 1927.

Q. Under what circumstances did you come in the United States? A. My father brought me.

Q. Who accompanied you from Greece to the United States? A. My mother.

Q. And you remained in the United States since October 4, 1927? A. Yes, sir.

Q. You were born in Greece, in the Island of Chios? A. Yes, sir.

Q. Did you attend school there? A. Yes, sir.

Q. What village was that? A. Kourounia, Chios.

Q. Now, when you arrived in the United States, how old were you? A. Eleven years old.

Q. While you were attending the school at village of Kourounia, did you have an occasion to see these young man who sits on my left, who is the respondent at this hearing? A. Yes, I did.

Q. Do you recall what month this young man came to the school where you attended? A. It was near the end of the school season — maybe, a month before or a month or two months before the school ended.

Q. You came to the United States in 1927 — October 4? A. That is right.

Q. Now, before you came to the United States, did you attend the school in the village of Kourounia? A. Yes, sir.

Q. How big is that school? A. I don't know.

Q. Just roughly. A. A big classroom.

Q. How many children attended? A. About fifty — forty or fifty children from the first to the sixth — all in one room.

Q. What grade were you at the end of 1927? A. In the fifth grade, I think.

Q. Now, at that time, I would refresh your memory — at the end of school season, did any boy come from the United States of America into this school that you recall? A. Yes.

Q. Now, do you recall this boy? Do you recall the name of this boy? A. Yes — Johnny.

Q. Do you see this boy there in this room now? A. Yes, sir. That's him right there. That is not a boy — he's a man.

Q. Will you please explain to this gentleman here what makes you remember this particular young man now? A. When somebody comes into the village — it is a small town — especially like this boy — he didn't know how to talk much Greek, we were making fun of him.

Q. And, that is one of the points that you recall? A. Yes, sir.

Q. Now, does the name of Sitaras refresh your memory of anything else besides that he came from America? A. No.

Q. Now, how far was he sitting from you in school, at that time? A. Well, the teacher had him way up front in the classroom, so he could learn Greek.

Q. Do you remember the name of the teacher who was at that time in this Greek school? A. Loizos.

Q. Was there anything peculiar or specific that refresh your memory, as far as the appearance of this young man was at the time? A. Only thing, he had a birthmark on his wrist.

Counsel to Respondent through Interpreter:

Exhibit the mark on your wrist to the Examining Officer and to the Hearing Officer.

(Examining Officer examines respondent's left hand.)

Counsel to Witness:

Q. Will you please describe as fully as you can this mark that he had on his left hand above his wrist? What kind of a mark was it? A. Black mark — brown mark — a birthmark.

Q. Was there anything else that refreshes your memory as to his identity? A. "Big Ears Johnny," because his ears were flapped out.

Q. When you let Chios, Greece, was that boy left there? A. Yes, sir.

Q. Would you know, of your own knowledge, who took care of him in this particular town? A. They brought him to the grandmother and grandfather.

Q. Do you know their names? A. "John" was the grandfather's name and "Maria" was the grandmother's name, as far as I remember.

Q. John and Maria? The last name, what was that last name? A. Sitaras.

Q. Where did they live at the time you knew them? A. Village of Kourounia.

Q. Now, since your arrival in the United States of America, have you had the occasion to return to Greece? A. Yes, sir.

Q. When did you return in Greece? A. In 1937 — I don't know the exact date — May.

Q. You do not remember the exact date? A. May 1937.

Q. What was the purpose that you visited Chios, Greece in 1937? A. I went over there to get married.

Q. To whom did you get married? A. To Helen Pa.

Examining Officer:

I object.

Hearing Officer to Counsel:

Q. What is the purpose of this line of questioning? A. It is to prove the identity of the respondent.

Q. What relation has the name of the witness' wife to the respondent?

Objection sustained.

Counsel:

I withdraw that question.

Counsel to Witness:

Q. After your marriage, when did you return to the United States? How soon thereafter? A. Five months and twenty-one days after that, I was back in the United States.

Q. In other words, you were absent about six months? A. Yes.

Q. At the time you visited Greece in 1937, did you have an occasion to see this young man? A. Yes, sir. I went in the village, where it was like a town holiday, and I met the boy again.

Q. And, in meeting this boy again, did that refresh your recollection? Was that the same boy that you had met in your school class before you departed for the United States? A. Yes.

Q. Now, at that time, how old were you when you got married? A. Twenty-one.

Q. Do you recall his age? A. No.

Q. But, you met him at this particular time again? A. Yes.

Q. And, you renewed your acquaintance? A. Yes, sir.

Q. Now, where did that take place? A. Kourounia, in the same town.

Q. Now, had this young man asked you anything about his parents or relatives? Did you recognize him to be the same boy that attended the class when you were a student in this Greek school in Chios Island? A. Yes.

Q. Will you please tell Examining Officer and all of us here when did you see the young man again? A. In the fall of last year. He came up to my house, rapped on the door, and came in. When I saw him, I recognized him as this John.

Q. When you say "John," is this the same boy, John Sitaras, that was in your classroom, and the same boy that you saw in 1937, and you saw him in the fall of 1945 in your home? A. Yes, sir.

Q. Where do you live, sir? A. 3806 East Pratt Street.

Q. How many children have you? A. Four.

Q. When you saw this young man here, was John Sitaras the same person that you have attended school together that you met in 1937 after you got married, and you met him in the fall of 1951 in your home? A. Yes.

Q. I repeat again the question: Is there any doubt in your mind whether this is the same person that came from America, or not? A. No.

Q. His name is John Sitaras that you have attended school — that he was there when you renewed your acquaintance in 1937, and he is the same person that you saw in the fall of 1951, who came to your home on Pratt Street? A. Yes, sir.

Q. And, there is no doubt in your mind that this is the same person? A. No, sir.

Q. Do you know, from your own knowledge, who brought this boy home to Greece at the time you were there in 1927? A. His uncle, Constantine, brought him over.

Q. Will you please tell the Examining Officer what was his uncle Constantine's last name? A. Sitaras.

Q. Now, the name of Sitaras is a common Greek name — right? A. At least, on the Island, anyway.

Q. And, there are many other families who have the same name of Sitaras. Is that correct? A. And, they're not my relatives.

Q. Do you know, from your own knowledge, what has happened or what has become of this uncle, Constantine, the man who brought the boy to the other side? A. I do not.

Counsel:

That is all.

Hearing Officer to Examining Officer:

You may cross-examine.

Examining Officer to Witness:

Q. You stated before that in 1927 you met a boy who came to your village in Greece from the United States of America. Is that correct? A. Yes, sir.

Q. How many boys came to your village from the United States of America in 1927? A. Nobody, except him. He was the only one.

Q. How do you know that he came to Greece from the United States of America? A. Because everybody knew it — that somebody came from America

Q. How do you know that he came from the United States of America? A. I saw it.

Q. Did you see him get off a boat that arrived in Greece from the United States? A. No.

Q. Then, how do you know he came to Greece from the United States of America? A. I heard that his uncle brought him from the United States.

Q. Then, your knowledge about his coming to Greece from the United States of America is only hearsay. Is that correct? A. Yes.

Q. From whom did you hear this? A. From my mother. And, then, I saw him in the classroom. They brought him in the classroom.

Q. Did you speak to him in the classroom? A. I did.

Q. What conversation took place between you and the respondent when you first met him? A. I tried to ask him how was America, as he knew it over here, and he said, "All right. Good."

Q. Did he understand you? A. A little.

Q. What language did you speak to him? A. Greek.

Q. What language did he speak to you? A. Half and half.

Q. When you say "half and half," what do you mean by that? A. Couple of words in American and one word in Greek.

Q. Did you understand English at that time? A. No.

Q. Then, how could you understand that conversation that was half and half? A. One word I could understand. "good." That was "kalla." It means "good."

Q. How old was this boy when you first met him? A. I'd say about six-seven years old.

Q. In what grade was he listed in this Greek school? A. First grade. Way up in front with the little ones.

Q. How old were you when you first met this boy? A. Eleven years old.

Q. You stated before that you recognized this boy because of a birthmark on his arm. Upon examination of his arm by me, I notice a brown mole on his outer left forearm, which does not appear particularly prominent. After all these years, how do you remember that the boy you met in 1927 had a birthmark? A. Because, when you make fun of somebody, you remember him.

Q. What does a small mark that is not prominent have to do with making fun of someone, as you have put it? A. I thought it was dirt and he wouldn't wash it off.

Q. You also mentioned that the respondent has large ears, and that is one of the reason why you remember him. In my opinion, he has small ears. What do you have to say about that? A. His ears were flapped out — big — as they are now, for a small boy.

Q. Do you consider that the respondent here has large ears? A. Not now.

Q. Do you consider that his ears are especially "flapped out?" A. No.

Q. How much older were you than the boy you said you met in 1927? A. About five years older.

Q. In view of this age difference, you didn't have much to do with him, did you? A. Yes — you play with children older than you.

Q. Do you mean to say that at the age of eleven, you played a great deal with a boy, as you say, six or seven? A. Yes.

Q. Did you have any contact with this boy from 1927 until 1937? A. No, sir.

Q. How many times did you see him in 1937? A. Two — three times. I remained in the village a week or two, and he came and visited me in the house.

Q. Then, from 1927 until 1951, a period of twenty-four years, you only saw this boy approximately three or four times? A. Yes.

Q. Then, how can you identify him as the boy that you met in 1927? A. By his name.

Q. You mean that when he came to your house in 1951, he told you what his name was? A. That's right.

Q. That is why you believe him to be the boy you met in 1927? A. Yes.

Q. If he had not told you his name, would you have known that it was the same boy you met in 1927? A. I would, because the features are much the same.

Q. Are you able to identify most people that you haven't seen for over twenty-five years? A. I think so. A person come into my place once and I can recognize him four or five months later.

Q. Did you ever meet this boy's parents? A. No, sir.

Q. Do you have any personal knowledge about his parents? A. No, sir.

Q. Do you have any personal knowledge as to his place of birth? A. No, sir.

Examining Officer:

No further questions.

Counsel:

With your permission, Mr. Carney.

Counsel to Witness:

Q. You are in business in the city? A. Yes, sir.

Q. How long have you been in business? A. Off and on — this last time, almost three years.

Q. What business are you in, sir? A. Lunchroom.

Q. And, you restricted to the colored trade? A. Yes, sir.

Q. And, you live with your family — where? A. 3806 East Pratt Street.

Q. You have no interest in this matter, one way or the other? A. No, sir.

Q. While you were in Greece and you had some conversations with this young man, he told you that he was born in the United States — right? A. Yes.

Q. But, you did not—

Examining Officer:

I object. There is nothing in the record that the witness testified that the respondent told him he was born in the United States.

Hearing Officer:

Objection sustained.

Counsel:

Exceptions.

Counsel to Witness:

Q. When you learned — when you find out that this boy was born in the United States—

Examining Officer:

I object. There is nothing in the record to show that the witness at any time stated that the respondent was born in the United States.

Hearing Officer:

Objection sustained.

Counsel to Witness:

Q. If a person comes in Greece, and they call them American, what do you understand to be the significance of an American-born? If a person comes to Greece and says they are an American, what is your understanding or contention as to where they were born? A. That they were born in America.

Counsel:

That is all.

Hearing Officer to Examining Officer:

Q. Have you completed your examination of the witness? A. Yes.

Hearing Officer to Witness:

Q. You stated the respondent, John George Sitaras, lived with his grandparents while in the village of Kourounia, Chios? A. Yes.

Q. Were his grandparents living at the time he left Greece? A. Yes.

Q. Both of them living? Is that correct? A. Yes, sir.

Hearing Officer:

Witness excused.

(Witness leaves room.)

Hearing Officer to Examining Officer:

Q. Do you desire to further axamine the respondent? A. Yes.

Examining Officer to Respondent through Interpreter:

Q. On February 14, 1952, you testified that you made your home in Kourounia, Chios, Greece, with your grandfather. Is that correct? A. Yes.

Q. Did anyone, beside you, live with your grandfather? A. My aunt.

Q. Was she the only person who lived with you and your grandfather? A. Nobody else lived with us. They were all married.

Q. Was your grandmother dead? A. No.

Q. Then, why did you state that only you and your aunt lived with your grandfather? A. After two — three years, my grandmother died. I said that my grandmother lived with us, too.

Examining Officer to Interpreter:

Q. Did the respondent state to you just previous to that last question that his grandmother lived with him? A. No.

Examining Officer to Respondent through Interpreter:

Q. When did your grandmother die in Greece? A. '30 or '31.

Q. If you are a citizen of the United States, why didn't you register with an American consul for service in the armed forces of the United States during the time young men were needed to serve in the armed forces of this country? A. I didn't know that in the United States were wanted young men.

Q. Did you know that the United States was at war with Germany and Japan? A. Sure, I knew that.

Q. When did you learn of that? A. In 1941.

Examining Officer:

No further questions.

Hearing Officer to Counsel:

Q. Do you further desire to examine the respondent? A. Yes.

Counsel to Respondent through Interpreter:

Q. During the guerillas' fight in Greece, have you participated on their behalf, or did you take any active part against the Greek government? A. We were under the occupation, and I helped our Greek government, but not the guerillas. We have no guerillas in our village.

Counsel:

That is all.

Hearing Officer to Counsel:

Q. Inasmuch as you are contending that the respondent is a citizen of the United States, may we assume that you do not make application for discretionary relief from deportation? A. Yes.

Hearing Officer to Respondent through Interpreter:

Q. Under direct examination by counsel, you stated that you never served in any country under the military forces. Is that correct? A. Yes.

Q. During your residence in Greece, were you not required to register for military service? A. No.

Q. Is it not a requirement in Greece that every male of a certain age is called up for military service? A. Yes.

Q. Then, why was it that you did not register for military service? A. They didn't call me because they didn't find me written in any of their papers.

Q. Of what country do you claim to be a citizen or subject? A. United States.

Q. If it is found that you have not established United States' citizenship, and if you are found to be subject to deportation as an alien, illegally residing in the United States, what country do you specify as the country to which you shall be deported? A. In the United States I want to remain.

Q. Then, it may be assumed from your answer, that you decline to specify a country to which you shall be deported,

if you are found to be an alien, illegally residing in the United States. Is that correct? A. Of course I decline.

Hearing Officer to Counsel and to Respondent through Interpreter:

Q. You are advised that I shall prepare, in writing, as soon as practicable, my decision setting forth the summary of the evidence, findings of fact, and conclusions of law as to deportability, and order. You will be furnished with a signed copy of my decision, and will then be afforded a period of five business days within which to take exceptions to a specific finding of fact or conclusion of law. Your exceptions, if submitted, shall be filed in duplicate with the District Director, Immigration and Naturalization Service, Baltimore, Maryland, on form I-290, which will be furnished with a copy of my decision. Do you fully understand this procedure? A. (By Counsel) Yes.

Hearing Officer to Respondent through Interpreter:

Q. Have you fully understood all the questions asked you at this proceeding through the interpreter? A. Yes.

Hearing Officer:

The hearing is now closed.

(CLOSED — 3:15 P. M.)

DESCRIPTION OF RESPONDENT: Race: White, Complexion: Medium, Eyes: Brown, Hair: Black, Height: 5-5, Weight: 135 lbs. Marks: Line scar inside right hand; mole, left forearm.

DEFENDANT'S EXHIBIT NO. 2

AFFIDAVIT

STATE OF OHIO, COUNTY OF TRUMBULL, SS:

I, GEORGE MODESTOU KOSTATOS, also known as JOHN GEORGE SITARAS, of 1804 Elm Road, N. E., Warren, Ohio, being duly sworn and deposed say:

THAT, beginning on or about October 23, 1951, when I was apprehended and arrested by the Immigration and Naturalization Service at Baltimore, Maryland, and from time to time thereafter, I have given testimony against my Attorney, George B. Petite, Esquire, of 214 E. Lexington Street, Baltimore, Maryland, which said testimony resulted and was used in the cases of United States of America v. George B. Petite, et al., and United States of America v. Gustav Katsaros, et al., in the United States District Court, Eastern District of Pennsylvania, held at Philadelphia, Pennsylvania, on or about September 19, 20, 21 and 23, 1955, before the Honorable Allan K. Grim, Judge;

AND WHEREAS, I, the said George Modestou Kostatos, also known as John George Sitaras, having had sufficient and due time to reflect on the nature of my activity, do now voluntarily, willingly, freely and without reservation, mental or otherwise, declare that my said testimony was incorrect and untrue, and falsely given against the one, George B. Petite;

AND, that all such testimony was made at the inducement of and threats by the Immigration and Naturalization Service, United States Department of Justice, at Baltimore, Maryland and Philadelphia, Pennsylvania;

AND, that I did testify and do these things under such inducement, promises and threats because I was lead to believe, by officials of the said Government Agency, that I could legally and freely remain in these United States of America, and further that I would be able to bring to this Country my wife and children at the expense of the Federal Government;

AND, that now having been befallen of a serious automobile accident, on November 19, 1957, and having been con-

fined to hospital and sick bed, duly believe and state that I have committed a grave injury and injustice against George B. Petite, my Attorney, who at all times, with due diligence and sincere effort, attempted to properly represent me, even to the extent of furnishing from his personal funds the sum of Two Thousand Dollars ($2,000.00), as bail with the said Agency of the United States Government, and at all times my said Attorney, George B. Petite, advised me to truthfully testify and fulfill all requirements of the Law and to state nothing but the true facts in my particular case;

AND, that I further engaged the said George B. Petite as my Attorney and have never been in any financial position to pay him a fee.

AND, whereas despite my said automobile accident, I am fully capable mentally to make these statements and during my convalescence I have been able to meditate on and correct the wrongs I have done to my Attorney, that I realize the full import and consequences thereof; I hereby state now and forever, and even if I am called upon to testify in any open Court, I am ready and willing to repudiate my testimony and actions under which I labored because of duress, misunderstanding, persuasion, promises and threats of the said Government officials.

AND, realizing the said consequences of my making this Affidavit, I do so freely, truthfully and in all fairness and justice to George B. Petite, who was made a victim of circumstances and lies and has suffered irreparable injury. May God forgive me for this injustice which I have done to George B. Petite.

As WITNESS my Hand and Seal;

GEORGE MODESTOU KOSTATOS,
Also known as
JOHN GEORGE SITARAS.

Witness:

GUS W. MAURLAKI
JOHN W. TICORAS
JOHN CONDOLEON

State of Ohio, County of Trumbull, to wit:

The said, George Modestou Kostatos, also known as John George Sitaras, being duly sworn, and informed of the contents of the above Affidavit, to wit, wherein he repudiates all and any testimony against George B. Petite, Esquire, his Attorney, affirms the truth therein and admits the same to be his voluntary act.

Sworn and Subscribed to this 27th day of February, 1958, A.D., before me, a Notary Public of the State of Ohio, County of Trumbull.

As Witness my Hand and Notarial Seal.

John W. Ticoras,

Notary Public.

My Commission Expires Apr. 7, 1958.

(St. Tr. 3):

JOHN V. CARNEY

* * * * * *

(St. Tr. 3-29):

DIRECT EXAMINATION

By Mr. Pierson:

Q. Mr. Carney, where do you live? A. I now live in Worcester, Massachusetts.

Q. In 1952 were you employed by the Immigration and Naturalization Service of the Department of Justice in Baltimore? A. Yes.

Q. When did you join the Immigration and Naturalization Service? A. July 25, 1926.

Q. Keep your voice up. A. July 25, 1926.

Q. And what position did you occupy on February 14, 1952? A. I occupied the position of Hearing Officer, Immigration Service.

(The Clerk) Keep your voice up.

(The Court) Can the jury hear the witness? You will have to speak louder.

Mr. Pierson, maybe you better go over near the jury box.

Q. (Mr. Pierson) Did you continue to occupy the position of Hearing Officer during the year 1952? A. I did.

Q. Until what date? A. Until the title was changed to Special Inquiry Officer.

Q. And when did that happen? A. The McCarran Act provided for that.

Q. Was that in December 1952 when that went into effect? The McCarran Act? A. That's right.

Q. Mr. Carney, I will ask you again to speak louder. Please keep your voice up.

During this year, 1952, did you have occasion to hold hearings in the case of Ioanis Georgios Sitaras? A. I did.

Q. I show you a certified copy of a document called "Warrant Hearing" and ask you if you can identify that paper as being a copy of some other paper with which you may be familiar? A. This is a copy of the hearing which occurred on February 14, 1952 before me as Deportation Examiner.

Q. Were you Deportation Examiner at that time? A. Yes, I held three different titles at different times.

Q. Well, now, give us the date. A. Deportation Examiner from December 1950 until early 1952.

Q. Including February 14th? A. Then that title was eliminated and the title was changed to Hearing Officer involving the same duties; and that title remained in effect until the effective date of the McCarran Act when the title was changed to Special Hearing Officer which involved the same duties as Deportation Examiner and Hearing Officer.

Q. And you identify this as a certified copy of a hearing held before you on February 14, 1952? A. I do.

(The Clerk) The defendant has left.

(The Court) Just a minute. In a criminal proceeding no proceedings can occur out of the presence of the defendant.

(Thereupon, the defendant returned to the courtroom.)

(Mr. Pierson) I offer this in evidence as Government Exhibit 1.

(The Clerk) Government Exhibit No. 1.

(Copy of "Warrant Hearing" February 14, 1952 was marked Government's Exhibit No. 1.)

(The Court) Do you want to read any part of this to the jury, Mr. Pierson?

(Mr. Pierson) Sir?

(The Court) Are you going to read this to the jury?

(Mr. Pierson) I was going to continue for a momen, if Your Honor please.

(The Court) All right.

Q. (Mr. Pierson) Now, under this hearing, what were your duties? A. My duties were to administer oaths, the oath to the alien, and then the hearing was conducted by the Examining Officer, the actual hearing.

Q. That is not you? A. That's not me, no. In other words, it was what you might say, a quasi-judicial proceedings and I was the judge to render the decision and to act on all objections.

Q. And who served as Hearing Officer and Examiner? A. Leon Lehem.

(Mr. Pierson) Can I have that exhibit a moment?

(The Court) Mr. Flynn?

(Mr. Flynn) If Your Honor please, if I may before this is introduced, may I ask Mr. Carney a question or two with respect to his qualifications as to whether he was a Hearing Officer at that time because we are definitely going to raise that question.

(Mr. Pierson) I have no objection.

VOIR DIRE EXAMINATION

By Mr. Flynn:

Q. Mr. Carney, isn't it a fact that you investigated this case of Mr. Petite? A. No, sir.

Q. Didn't you present the case and present the testimony before Mr. Phillips on October the 23rd, 1951? A. Not to my knowledge, no.

Q. Well, now, let's not say not to your knowledge, but did you or did you not make an investigation of any part

of the case of Mr. Petite? A. If you will give me the exact date.

Q. Well, it's prior to October 23, 1951. That is prior to the day on which he was arrested, that the alien was arrested.

(The Court) Do you mean investigate the case of Petite or investigate the case of Kostatos?

(Mr. Flynn) Either one.

(The Court) Well, was there a case against Petite at that time?

(Mr. Flynn) Not at that time, no.

My point is simply this, Your Honor, and the law is very clear on this that if any of the people in the Immigration and Naturalization Service have investigated the case that they then cannot be a Hearing Officer.

Now, that was under the old Act, and there are a number of cases on it, and what I want to know from Mr. Carney is whether or not he did not investigate phases of this particular case particularly of this alien coming in prior to the time that he was a hearing officer.

(The Witness) Prior to the time that I was a Hearing Officer, I was a Hearing Examiner, Hearing Officer Review, and I reviewed all investigations and all hearings; but I did not conduct them.

Q. (Mr. Flynn) Well, now, did you pass in your review, Mr. Carney, did you pass on any of the evidence? Did you determine whether or not any action should be taken against any person in this case? A. I do not recall.

Q. Well, I think it is important for you to recall, Mr. Carney.

Don't you know that in this particular case of this alien that you were the man who conducted the investigation? A. No, sir. I was not the man who conducted the investigation.

Q. Well, now, isn't it so that you were the man who ordered the investigation, that it was referred to and you passed on it, and you were the man who determined whether or not this man, this alien, should be arrested? A. No, I passed on whether or not a warrant of arrest should issue.

Q. That's right. A. On the basis of the evidence presented.

Q. That's right. Now, after that time, didn't you, after the warrant was issued, after it was brought in, didn't you, and Mr. Phillips is here — and you and I knew Mr. Phillips pretty well — and Mr. Phillips was here and he had conducted a hearing, which was on the 23rd, the day that this man was arrested, and weren't you present at that time, and didn't you offer the evidence that you had collected in connection with this man? A. I did not collect any evidence. I only reviewed the evidence presented.

Q. So that you did have part at least in the investigation of this case by reviewing the evidence that was brought in and determined whether or not this man should have a hearing? A. I reviewed the evidence to establish whether or not a warrant of arrest would issue.

Q. And after the warrant of arrest was issued, what did you do about the case then? A. I had nothing to do with it because after that I was then made a Deportation Examiner. The position of Hearing Examiner was eliminated.

Q. As Deportation Examiner, did you have any connection with this case at all? A. Except to hear the evidence presented by the defendant and by the Government.

Q. That was a Deportation Examiner? A. That's correct.

(Mr. Flynn) If Your Honor please, for the purpose of keeping the record clear, I object to the testimony of Mr. Carney on the ground that he did investigate the case.

(The Court) Well, he said that he did not investigate the case.

(Mr. Pierson) He said he didn't.

(The Court) His testimony is that he reviewed the investigation that somebody else made in order to determine whether a warrant of arrest should be issued, and he evidently decided that a warrant of arrest should be issued because it evidently was issued.

And he was thereafter made a Deportation Examiner and administered the oath, I gather, in this proceeding, and acted as the judge and somebody else represented the Government in presenting the evidence.

That is my understanding of the testimony so far.

Now, have you any authority on that?

(Mr. Flynn) Yes, I have this authority. The Supreme Court has said that no one in the Immigration and Naturalization Bureau can in any way be conducted with the investigation or make the investigation or be a prosecutor and judge.

Now, that's the Chinese case of **Wong Yang Sung v. McGrath**, 339 U. S. 33.

In that case they said, and I know this to be the fact unless the Immigration Service has changed their rules, as applied to this case. Now, the point I am raising, and I am doing it merely for the record so we will have it properly before this Court, that if Mr. Carney had anything at all to do with the investigation of this case or determining whether or not there shall be a charge presented and then sat as a hearing officer after that, we feel that under that case, he has not only no right to testify, but he has no right to administer an oath or to hear the testimony.

(Mr. Pierson) You have exactly the parallel situation in which the Court is asked to issue a bench warrant or sit in a preliminary hearing. Here this man said that he did not investigate the case. He reviewed the evidence

at an earlier place to see whether a warrant should issue, and in that connection I should like to refer Your Honor to a case at 349 U. S. 302, Marcello v. Bonds, which is another case much along the same line, and as I understand those cases, they relate to an actual investigation.

(The Court) Well, it would seem to me that it would make some difference whether you were trying to review the decision made by a man who had been both prosecutor and judge, that a decision that he made in that case might be invalid and yet he might not be disqualified to administer the oath.

(Mr. Pierson) And to hold a hearing.

(The Court) And to hold a hearing.

The two points seem to me to be two different points; but I will be glad to look at these two cases. I suggest that the jury take their five-minute recess at this time so that I can look at the authorities and we won't be wasting your time.

So this will be your morning recess. So unless you are counting on a recess at 11:30 for some particular reason, we will take our recess now and then we will go right on until lunch time.

Then, I will go out and read these two cases.

(Thereupon, there was a short recess taken, after which the following occurred:)

(Mr. Pierson) There are one or two questions I want to ask Mr. Carney based on the record in this case which would show that he had nothing to do with the preliminary hearing or investigation in this case.

(The Court) Well, before the jury comes back, I will be glad to have you ask any additional questions which may throw some light on it; but as I understand that the statute referred to in this Wong Yang Sung case, it says:

> "Section 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

"(a) PRESIDING OFFICERS. — there shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as deemed to supersede the conduct or specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute."

Now, this man was a Deputy Examiner, and I take it he is one of the examiners referred to in this section, and the title was later changed to Hearing Officer, but it meant the same thing as I understand it.

Now, I gather that Mr. Flynn admits that aside from the fact that he might have had something to do with the particular case before, he was a person authorized to conduct such a hearing.

(Mr. Flynn) We don't know that, because as you read that case, it says prior to the McCarran Act, which was passed in 1952, June the 7th, 1952, that they had to comply with the Administrative Procedures Act.

(The Court) Well, you are now talking about Mr. Pierson's case?

(Mr. Flynn) No, sir, I am talking about the Chinese case.

(The Court) Well, the Chinese case was before the McCarran Act.

But this man was generally a person who was qualified to administer oaths, wasn't he? His position?

(Mr. Flynn) No.

(The Court) He hadn't had any connection with this case, or if he hadn't, do you contend that he would not have been a proper person?

(Mr. Flynn) No, sir, as I read it, the only time Mr. Carney, according to his position, that he could do that was when somebody was coming across the line.

(The Court) Was what?

(Mr. Flynn) Somebody coming into the country. For instance, somebody stationed at the Canadian border. They said they were not qualified to issue oaths generally but only in a limited way.

(The Court) Well, what says that?

(Mr. Flynn) In the Chinese case.

(The Court) Well, I must have missed that. Where does it say that? Whereabouts?

(Mr. Flynn) Well, it's a very long case, sir.

(The Court) Do you a reference to it?

(Mr. Flynn) I have a reference to the case but I don't have a reference to that particular thing; but as I read it, it does say that there was a certain limited class of people in the Immigration and Naturalization Service who could administer oaths only for a limited thing.

(The Court) But the man who administered the oath in the Chinese case was not a man in the position of this witness; he was a man who was known as an Immigration Inspector.

(The Witness) Can I speak a moment? That is referring to Section 17 of the 1917 Act.

(Mr. Flynn) That's right.

(The Witness) Where they were required to administer the oath in crossing the border.

(Mr. Flynn) That's right.

(The Witness) And after that an amendment came out when there was the decision there and the Deportation Officer was then inaugurated.

(Mr. Flynn) That is exactly my point. Mr. Carney and I are on all fours on that, and that case says, although it was decided before the McCarran Act, it says that in that situation, that they had to comply with the Administrative

Procedures Act by having some particular person designated as a Hearing Officer that had nothing at all to do with the investigation of the case.

Now, the McCarran Act came along, and that was only in June of 1952, and in that McCarran Act it definitely designates how they shall appoint a hearing officer and that they do have the right to administer all oaths.

(The Court) Well, this man was a Hearing Officer, was he not? Whether he was called a Hearing Officer or a Deputy Examiner.

(Mr. Pierson) Deportation Examiner.

(The Court) He says his functions were the same and that he was the man who was charged with the duty of presiding at this hearing. That is his testimony so far.

(Mr. Flynn) Well, that's his testimony, yes, sir, but he also testified that he had other duties, which he naturally would in that organization.

(The Witness) I testified I had other duties as a Hearing Examiner Review.

(Mr. Pierson) In other words, the difference is this, as I see it: The difference is whether this man was under the control of the Immigration and Naturalization Service Director or whether he wasn't, and in the Chinese case these people who were disqualified were people who were disqualified because they were under the Immigration Director, and this man was a Hearing Officer.

(Mr. Flynn) Under the Director, yes.

(The Witness) Well, Mr. Flynn ought to know that because at that time there was talk of putting the Deportation Examiners under the U. S. Attorney's Office.

(The Court) Well, I think the witness should not argue. I think the United States Attorney should argue the point, and if the witness wants to speak to the United States Attorney or to call his attention to something, I think that might be proper, since the jury is out of the courtroom now.

But it is my understanding that the man involved in the Chinese case, to which Mr. Flynn has referred me, the man who was conducting the hearing was an Immigration Inspector, and the Court held that there was nothing in the Act providing that Immigration Inspectors shall conduct Deportation Hearings or be designated to do so, the man who does direct them to conduct border admissions of aliens seeking admission, he may administer oaths, and they may consider evidence, as these functions are indispensable to their investigations, which are concededly within their competence, and these functions are likewise necessary, and so on, but it says that by Congress granting these powers especially constituted them, and it says that 7(a) qualifies certain people, and this is the man, this man is one of the people who was designated by Section 7(a), as I understand it, and therefore it would seem to me that unless he is disqualified by reason of having taken part in this particular case in some way which would disqualify him from hearing the case, that he was one of the people who was authorized to preside at such hearings and to administer oaths at such hearings and to decide such questions.

(Mr. Flynn) Under what Act? If I may interrupt, Your Honor, under what Act does it say?

(The Court) Of the Administrative Procedures Act.

(Mr. Flynn) Yes, that's correct.

(The Court) And therefore, as I understand it, he was a designated Deportation Examiner. That's what he says.

(Mr. Pierson) In February, and later he was a Hearing Officer.

(The Court) And later became a Hearing Officer. He said they had the same duties, but they changed the title until the McCarran Act, and after the McCarran Act he was appointed and was given some other title.

Now, does not the evidence show, Mr. Flynn, that he was an examiner authorized to conduct this type of hearing generally?

(Mr. Flynn) Well, of course, that's for Your Honor to decide; but I would like to have in the record the date as to exactly when Mr. Carney was appointed to the various positions.

(The Court) I thought he did that. Of course, we can let Mr. Pierson prove that. Now, of course, if he was not designated to conduct these various hearings by the Department, that would be a different thing.

But if he was designated to do it, the question that he had authorized the issuance of a warrant in this case seems to me might go to the question of whether his decision in the case would meet the requirements of the Administrative Procedures Act in the attack by the man who was being heard, whose name was George Kostatos or Sitaras, whatever his name was, that if he made a decision adverse to the alien, it would be possible that the alien might raise the question on habeas corpus proceeding or in some other way.

But if he was a man who was generally authorized to preside at these hearings, then I will rule that he had authority to administer an oath, and I will rule that from what the evidence shows so far he had already done in the case, namely authorized the issuance of a warrant after reviewing what a prosecutor had laid before him did not disqualify him to administer the oath, whatever effect it might have had after a full review of the facts on appeal from a decision which he might have made or on habeas corpus proceedings instituted by the alien.

(Mr. Pierson) Except, Your Honor, that I propose to show that he did not even act as a reviewing officer in issuing the warrant, that I have the documents here which I expect to present after.

(The Court) Well, I think the important thing is, if you have the information, then put him back on the stand and prove the facts, and what we wanted to know is whether he was the person who had been designated by the Department to conduct these hearings. That is one thing, and

Mr. Flynn says he wants to know the date on which his various positions changed, and then if you have evidence as to whether he had any such previous contact in issuing the warrant in this case—

All right, bring the jury back and Mr. Pierson can present the additional evidence.

Call the jury back.

(Thereupon, at 11:40 o'clock a.m., the jury returned to the courtroom, and the following occurred:)

DIRECT EXAMINATION (Resumed)

By Mr. Pierson:

Q. Mr. Carney, you were asked by Mr. Flynn whether you had passed on an application for a warrant of arrest for John George Sitaras alias Georgios Sitaras, and you said you thought you had. A. I said I thought I had.

Q. Have you examined the— A. No, I have not seen the document, and I was not aware whether or not I had done that because I had done so many of them before that, that I thought probably I had done that one.

Q. I show you this paper marked "Application For Warrant of Arrest". Is that the type of proceeding to which you had reference? A. That's right, sir.

Q. And who was the officer who passed on that, sir? A. Herbert F. Moseley, Acting Chief, Investigation and Deportation Section.

Q. Having seen that, will you say whether you had passed on this particular case? A. I would say that I had nothing to do with that case.

(The Court) Is that all, Mr. Pierson?

(Mr. Pierson) I want to offer this in evidence with the request that I be permitted to file a certified copy later in substitution. Government's Exhibit 2.

(The Clerk) Government's Exhibit 2, Application For Warrant of Arrest.

(Application For Warrant of Arrest was marked Government's Exhibit No. 2.)

(The Court) Let me see this paper, the Exhibit 1.

(The Clerk) Exhibit 1.

(The Court) It appears that from Government Exhibit No. 1, the transcript of this warrant hearing, that you served as Deportation Examiner.

(The Witness) That's right, Your Honor.

(The Court) And that Mr. Lehem served as Examining Officer.

(The Witness) That's correct, Your Honor.

(The Court) Were you a duly appointed Deportation Examiner at that time?

(The Witness) I was, Your Honor.

(Mr. Pierson) I have a certified copy of his appointment, Your Honor, which I can show you.

(The Court) And was it part of the duties of a Deportation Examiner to conduct such hearings?

(The Witness) It was, Your Honor.

(The Court) And to administer oaths at such hearings?

(The Witness) It was, Your Honor.

(The Court) And you testified that you acted as a sort of judge in that hearing?

(The Witness) That's right, Your Honor.

(The Court) And who acted as the prosecutor?

(The Witness) Mr. Lehem.

(The Court) The Examining Officer?

(The Witness) Yes, sir.

(The Court) The Examining Officer acted as the prosecutor in effect?

(The Witness) Yes.

(The Court) And you say that having refreshed your recollection by examining this document, Government Exhibit No. 2, you do not believe that you have had anything to do with the case?

(The Witness) I had nothing to do with the case prior to acting as Deportation Examiner.

(The Court) Do you have any other question you want to ask, Mr. Flynn, before I rule?

(Mr. Flynn) If Your Honor please, Mr. Pierson has offered me here a certified copy of Mr. Carney's appointment, and I would like to refer to some general phases of it here which laid down what his duties are, and up to now I haven't found any place in here which says he has the right to administer an oath.

Do you know where it is?

(The Court) Well, doesn't the right to administer an oath follow from the statute itself?

Would you get 8 United States Code 152 as it existed in 1951.

(Mr. Flynn) Your Honor, it very probably does, but they are very meticulous in this appointment here with respect to what his dtuies shall be, how he shall conduct himself, and so on, and there is not one word in there, as far as I can see about that.

(Mr. Pierson) Yes, sir, it says "The incumbent is required to administer oaths and affirmations."

(Mr. Flynn) I apologize, Your Honor, I did not see that.

(The Court) Anything else, Mr. Flynn?

(Mr. Flynn) I only want to ask this one question. Mr. Carney—

(The Court) Let's see. Mr. Pierson was just reading. Will you tell me what you were reading from?

(Mr. Pierson) I will offer it in evidence, Your Honor.

(The Court) All right, but I think you had better let Mr. Flynn go ahead.

(Mr. Flynn) Well, I think he had better offer it now.

(The Court) All right.

Q. (Mr. Pierson) Mr. Carney, I show you this paper which is titled "Certification" and ask you what that certifies. A. That certifies that on February 18, 1951 I was promoted from Hearing Examiner Review to Deportation Examiner.

Q. And then it shows another change in your status, does it not? A. This is a reassignment.

Q. Well, but you were changed? A. Changed from Deportation Examiner to Special Inquiry Officer under the McCarran Act. That was when the Act changed it, yes.

(Mr. Pierson) I offer this certified copy as Government Exhibit No. 3. Will you pass it up to the Court.

(The Clerk) Government Exhibit No. 3.

(Certification was marked Government Exhibit No. 3.)

(The Court) And what you were reading, Mr. Pierson, about the authority to administer oaths is taken from the—

(Mr. Pierson) The description of the duties of the office.

(The Court) Description of the duties of the office which is contained in the certification which you have just offered in evidence.

(Mr. Pierson) Yes, sir.

(The Court) Mr. Flynn has seen it?

(Mr. Flynn) Yes.

(The Court) All right.

Any more questions, Mr. Flynn?

(Mr. Flynn) No, sir.

(The Court) I will overrule the objection. The defendant, of course, has an exception to the ruling permitting this witness to testify that he administered the oath.

(Mr. Pierson) At this point, Your Honor, I would like to read to the jury Government's Exhibit No. 1.

(The Court) I don't believe there is any evidence yet that he actually administered the oath. Does that appear in here?

(Mr. Pierson) I would like to read at this time a certified copy of the proceedings which took place on February 14, 1952.

(The Court) If you are going to read it all, go ahead and read it. If you are not going to read it all I suggest that Mr. Flynn follow it with an extra copy, if there is an extra copy.

(Mr. Pierson) I will read it all.

(The Court) So that Mr. Flynn can read any parts you don't read if he wishes.

(Mr. Pierson) I will read it all.

(The Court) If you are going to read it all, all right.

(Mr. Flynn) If Your Honor please, before he starts reading, I want to enter a formal objection to that. I do not believe that is the way to prove perjury, just reading statements that a man made some place. I think what you have to do is put these people on the stand and ask them what they did testify to at that particular time.

Now, having made that motion, in all deference to your Honor, I don't have any great weight of authority to back me up on it, but at the same time you just can't come in here with some papers where somebody has asked a question some six years ago and then say that that is it.

(The Court) It's not just a paper, Mr. Flynn; it purports to be a certified copy of the stenographic transcript of the hearing.

(Mr. Flynn) Well, I make my objection.

(The Court) And if one of the witnesses undertakes to say that that is not what was said, the jury may consider his testimony along with the transcript; but a certified transcript of the hearing which has been recognized by the Examiner, that is the presiding officer as being the transcript of the hearing is, I believe, admissible in evidence, and I will overrule your objection.

(Mr. Flynn) But it has not been shown to Mr. Carney yet, and he has not identified it.

(The Court) I thought it was shown to him.

(Mr. Flynn) No.

(Mr. Pierson) Before you offered it in evidence. I thought it was.

(The Witness) Yes.

(Mr. Pierson) I will show it to you.

(The Court) Show it to him.

(The Witness) This is the transcript of testimony that I identified.

Q. (Mr. Pierson) Will you look through that and see whether there is anything in there which appears to you to be anything other than what occurred.

In the first place, did you administer an oath? A. I administered the oath, yes, sir.

(Mr. Flynn) This is February 14th.

(Mr. Pierson) February 14, 1952.

(The Witness) "Deportation Examiner to respondent through interpreter:

"Will you please stand and raise your right hand."

Q. Well, I don't want you to read it. A. I am just reading the oath part.

(Mr. Pierson) I would like, if Your Honor please, to show Mr. Flynn the original of that paper, and I want to ask Mr. Carney if this is the original of which that certified copy was taken.

(The Witness) It is, and that is my signature attached to it.

(The Court) Well, I suggest that you give the original to Mr. Flynn so that he can follow it.

(Mr. Flynn) I have a copy.

(The Court) You have a copy?

(Mr. Flynn) Yes. They have been served on me.

(Mr. Pierson) I will now read the certified copy and present the original to the Court so that Your Honor can follow it.

* * * * * *

(St. Tr. 68-70):

Q. (Mr. Pierson) Now, Mr. Carney, did you conduct any further examination on any other date in connection with this case? A. Yes, sir, after the procedure as outlined had been completed in Philadelphia, the hearing was reopened in Baltimore, Maryland.

Q. And that was on June 16, 1952? A. Well, I wouldn't know the date unless I saw the records.

Q. Is this a certified copy of the record of your hearing at that time? A. That is.

Q. And who were the witnesses? A. Eleftherios Sitaras was one.

Q. There were two witnesses?

(Mr. Flynn) Two witnesses.

(The Court) Well, this Sitaras, John Sitaras or Kostatos, whatever his name was, was a witness at the beginning

apparently, and then this Eleftherios or Louis Sitaras was a witness; is that right?

(Mr. Pierson) Yes, and then there was additional testimony from Kostatos.

(The Court) That's what I say, and this was at the beginning.

(Mr. Pierson) Yes.

(The Court) At the beginning, and then Louis Sitaras or Eleftherios, who seems to be the same man testified alone, so far as I can see.

Q. (Mr. Flynn) Is that a true copy of the hearing conducted before you? A. Yes, it is.

(Mr. Pierson) I offer this certified copy of the hearing of June 16, 1952 as Government Exhibit No. 4.

(Mr. Flynn) The same objection, Your Honor.

(The Court) Do you want to ask him any more questions?

(Mr. Flynn) No, sir.

(The Court) Objection overruled.

(The Clerk) Exhibit No. 4 for the defendant.

(Transcript of hearing of June 16, 1952 was marked Government's Exhibit No. 4.)

(The Court) You don't object because it is a certified copy of the hearing rather than the original do you?

(Mr. Flynn) No, sir. I object to proving the perjury in this way. That's my only objection.

Q. (Mr. Pierson) Mr. Carney, are you still with the Immigration and Naturalization Service? A. No, sir, I retired March 31, 1955.

Q. Did you swear the witnesses in the second proceeding A. I did, yes.

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(St. Tr. 80):

GEORGIOS M. KOSTATOS

* * * * * *

(St. Tr. 82):

DIRECT EXAMINATION

* * * * * *

(St. Tr. 82-124):

Q. (Mr. Pierson) Now, Mr. Kostatos, where were you born? A. I was born in Chios in the village of Agreos.

Q. What was the date of your birth? A. December 24, 1919.

Q. Are your parents living? A. Yes, they are.

Q. And where are they living? A. In the village of Agreos, Island of Chios.

Q. Are you married? A. Yes.

Q. When were you married?

(The Witness) (In English) In 1944.

(The Interpreter) 1944.

Q. (Mr. Pierson) Do you have any children? A. Two.

Q. And where are your wife and children? A. At the present time, and I indicate, yes, at the present time, he says that they are at the present time in Chios.

Q. When was the first time that you were in the United States? A. I came in 1951, October.

Q. Do you remember the date? A. No.

Q. In what manner did you come to the United States? A. I left Athens. I was sent from Athens to London in September for the purpose of catching a ship.

I remained in England for seventeen days, in Bristol, England. After that I took the ship SANTA IRENE. When we left there I was a cook in there, and we came for seventeen day to Baltimore.

Q. Was Baltimore the first place that you came to in the United States? A. Yes.

Q. Where did you leave the ship? A. He says I don't remember the place in Baltimore.

Q. Was it in the Port of Baltimore? A. It was in the place where it was loading coal.

Q. Was that in Baltimore? A. Yes. He say "I don't know what place it is." I believe Baltimore.

Q. When he left the ship, did he leave by himself? A. He says no, the immigration came to the ship, and the inspector told us we could go ashore, and I went ashore — we went ashore by ourselves.

Q. Whom does he mean "by ourselves"? A. He means the crew.

Q. Where did he go when he left the ship? A. He says he took a walk, got off the ship and just took a walk around the vicinity and then he went back on the ship.

Q. And how long was he off the ship on that occasion? A. One hour.

Q. When did you leave the ship the next time? A. The same day. When we went to the ship, a ship chandler came on board named Mitos John. I had a card of Mr. Petite, this gentleman, indicating, meaning the defendant, and I asked him, meaning the ship chandler, "Do you know this gentleman?" And he said, "Yes."

Q. As a result of your conversation with this ship chandler did anyone come to the ship to see you? A. Yes, Mr. Petite came.

Q. When did he come?

(The Witness) (In English) The same day.

(The Interpreter) The same day. 8:30 or 9 o'clock.

Q. (Mr. Pierson) Was that in the morning or evening? A. Evening.

Q. Did you speak to Mr. Petite? A. Yes.

Q. What was the conversation? A. I said to Mr. Petite, "I have come to the United States on this ship, with this ship."

Mr. Petite said to me, "If you want to get out and come and see my family, come with me, and in the morning again I will take you back to the ship."

Q. Did you go with Mr. Petite? A. Yes, I went.

Q. That evening? A. Yes.

Q. Where did they go? A. He took me in the car and took me to his house.

Q. Where did he spend the night? A. In the house of Mr. Petite.

Q. Who was there? A. Mr. Petite, one of his sons, Andreos, his wife, and his mother-in-law, meaning Mr. Petite's wife and mother-in-law.

Q. Where did he spend the night? A. In Mr. Petite's house.

Q. What time did you leave Mr. Petite's house the next morning? A. I don't remember; 8'oclock maybe.

Q. Was Mr. Petite with you? A. Yes.

Q. Did you go by automobile or in some other way? A. With his car.

Q. When you say "his car" whose car do you mean? A. Mr. Petite's.

Q. Where did you go? A. He told me he would take me back to the ship.

(The Court) He said something about 8 o'clock. Is that in the morning or evening?

(The Interpreter). That was the morning after he spent the evening.

The last thing, he told me he would take me back to the ship.

Q. (Mr. Pierson) Did you go directly back to the ship? A. We went by his office first and we remained there for a short time and then went to the ship.

Q. Was the ship there when you got there? A. Mr. Petite then told me that the ship had left.

Q. Did he say whether the ship had left of his own knowledge? Did you see that the ship had left of your own knowledge or just go by what Mr. Petite told you? A. I accepted that what he had told me.

Q. What did you do then? A. I returned back with him.

Q. Where to? A. To his house.

Q. How long did you stay in Mr. Petite's house? A. I don't remember; well, about fifteen or twenty days.

Q. Were you—

(Mr. Flynn) He said at his house?

(The Interpreter) At his house.

Q. (Mr. Pierson) Were you working during that fifteen or twenty day period? A. No.

Q. Are you John George Sitaras? A. No.

Q. Did you ever tell Mr. Petite that you were John George Sitaras? A. Me? No

Q. Did you ever tell anyone that you were John George Sitaras? A. Here in America?

Q. Yes. A. I told Mr. Frankos for whom I was working that my name was that.

Q. When you say "that" do you mean John George Sitaras? A. There where I was working.

Q. When did you go to work? A. I don't remember. November, I don't remember the date.

Q. Where did you get the idea of saying that you were John George Sitaras? A. Mr. Petite baptized me that name.

Q. When did he do that?

(Mr. Flynn) Baptized?

(The Interpreter) If Your Honor please, the answer in Greek literally interpreted was "Mr. Petite baptized me that name."

The word "baptized" was used facetiously by the witness.

(Mr. Flynn) Just a minute. I object to that.

(The Court) Strike out what the interpreter said, "facetiously". The interpretation is for the jury.

Q. (Mr. Pierson) What does he mean by the word "baptized"? A. He gave me that name, Mr. Petite. I don't know that name.

Q. Were there any people named Sitaras in his village when you left that village? A. Many.

Q. With the name of John George Sitaras? A. In my village?

Q. Yes. A. No.

Q. What else did Mr. Petite tell you with reference to John George Sitaras? A. Mr. Petite told me that "I am going to give you that name and you will say that you are John George Sitaras."

Q. When did he tell you that? A. As soon as we got back from the ship where we had went and it had left, when we got back.

Q. Did he tell you why he was going to call you John George Sitaras? A. He did, he told me.

Q. What was the reason given you? A. That that boy born was here in America and you can remain in America.

Q. Was this before or after you had had your first hearing, the one before Examiner Phillips? A. I don't remember; I didn't know a Mr. Phillips.

Q. Was it before or after you were first arrested by the Immigration Authorities in Baltimore? A. Before the Immigration caught me.

Q. Did you learn anything more about John George Sitaras before the Immigration caught you? A. The same thing he told me the first time, the same thing I knew.

Q. Where did you get the information that you gave the Immigration authorities about John George Sitaras?

(The Interpreter) Read that back.

(The last question was read by the Reporter.)

A. From Mr. Petite.

Q. (Mr. Pierson) Did you know anything about John George Sitaras yourself other than what you learned from Mr. Petite?

(The Witness) (In English) No.

(The Interpreter) No.

Q. (Mr. Pierson) Do you recall that you had a hearing before Deportation Examiner John V. Carney in Baltimore on February 14, 1952? A. I don't remember; I may have went there but I don't remember.

Q. Do you remember the hearing in which you were placed under oath with respect to your proposed deportation from the United States? A. Yes, in Baltimore.

Q. Do you remember stating at that time that your true and correct name was Ioanis Georgios Sitaras? A. Yes, sir, I remember.

Q. Was that answer true? A. No, no.

Q. Who, if anyone, told you to give that answer? A. Who told me? Mr. Petite.

Q. Do you recall saying at that time that both of your parents were dead? A. Yes, I remember.

Q. Was that answer correct? A. No. They were dead; Mr. Petite had told me they were dead, but I didn't know them at all.

Q. Is he speaking of the parents of John George Sitaras or his own parents? A. Sitaras' parents.

Q. Do you remember saying that you had a brother and a sister in the United States? A. Yes.

Q. Was that answer true? A. No, false. That family exists but they are not my brother and sister.

Q. Does he recall ever saying that he had a brother and a sister in the United States? A. Yes.

Q. Was that answer true? A. No.

Q. Did anyone tell him to say that, and if so, who told him? A. Mr. Petite.

Q. Do you recall being asked if your correct name was not Georgios Kostatos? A. They asked me.

Q. And do you recall denying that you were Georgios Kostatos and claiming that you were John George Sitaras? A. Yes.

Q. Was that answer true? A. No.

Q. Did anyone suggest to you that you make that statement, and if so, who? A. Suggested what to me?

Q. To say that you were not Georgios Kostatos but you were John George Sitaras? A. Yes, Mr. Petite.

Q. Do you recall being asked where you were born and replying that you were born in the United States? A. Yes.

Q. Was that answer true? A. No.

Q. Where did you say you were born? A. I said Chester, Pennsylvania.

Q. Was that answer true? A. No.

Q. Did anyone suggest to you that you should give this answer? A. Mr. Petite.

Q. Do you recall giving your father's name as Georgios Sitaras? A. Yes.

Q. Was that answer correct? A. We said it but it's a lie.

Q. Do you recall saying that your mother's name was Maria Spanos Sitaras? A. Yes.

Q. Was that answer true? A. No.

Q. Did anyone tell you to say that and if so who told you? A. Mr. Petite.

Q. Were you in the Greek Army? A. Yes.

Q. Do you recall saying that you did not serve in the Greek Army during the war because you were not registered in any of their records and they couldn't find you? A. I told the Court that I went as a soldier.

He says, "I told the Court that I served as a soldier. I had an interpreter, Mr. Kampos, and I don't know what he told them."

Q. Tell him that I am not referring to the first hearing but to the hearing before Mr. Carney at which he was represented by Mr. Petite. A. I had Mr. Petite as the lawyer from the very beginning.

Q. Did you ever see Mr. Petite before, Mr. George Petite, the defendant in this case, before you came to the United States? A. I have seen him twice in Greece; two times in Greece.

Q. How old are you now? A. Thirty-seven. I am going on thirty-eight.

Q. How old were you in October 1951 when you first came to the United States? A. Twenty-nine.

Q. How long before you came to the United States was the last time that you had seen Mr. George Petite in Greece? A. I don't remember the date. He had come down to the village at the time that his mother had died.

Q. Is that when you met him? A. I had seen him then in church.

Q. Was that the first time you met Mr. Petite? A. The second time.

Q. When was the first time you met him? A. I believe 1936 or 1935.

Q. Did Mr. Petite know your parents? A. Yes.

Q. Were either of your parents with you in 1935 or '36 when you first met Mr. Petite? A. I was young then. My parents were with me. I lived with them.

Q. Was this the same village in which Mr. Petite's mother had died? A. Lately the second time Mr. Petite came when his mother had died, I had gotten married and I was living in my village, in his village.

Q. What village is that? A. Kourounia.

Q. How far is Kourounia from the village in which you were born? A. Fifteen minutes walk.

Q. Did you go to school in Greece? A. Yes.

Q. Where did you go to school? A. Agreos.

Q. Is that the same school that the children from Kourounia would go to? A. No.

Q. How long did you go to school there? A. Six years.

Q. Do you know whether or not Mr. Petite knew your wife and children? A. I don't know.

Q. Are you related to Mr. Petite in any way? A. No.

Q. Are your parents related to Mr. Petite? A. Maybe they do because we had the same surname, but I don't know.

Q. Now, after you stayed in Mr. Petite's house you say for some days, do you recall going anywhere else with him? A. Yes.

Q. Where did you go? A. We went to Wilmington.

Q. For what purpose? A. To go to find an uncle of John George Sitaras, to find him.

Q. Did you find him? A. Yes.

Q. Was Mr. Petite with you when you found him?

(The Interpreter) Is "you" singular or plural? When you found him?

Q. (Mr. Pierson) Was Mr. Petite with you, singular, when you saw the uncle? A. Yes.

Q. Do you know what month that was in? What year? A. It was in '51, but I don't remember the date; before the Immigration caught me.

Q. Do you recall what was said on that occasion? A. They spoke among themselves. I didn't speak.

Q. Did you go anywhere else with Mr. Petite before the hearing on February 14, 1952? A. I went, I don't remember the year, I went to Chester.

Q. Do you know Louis Sitaras of Baltimore? A. Yes.

Q. Where and when did you meet him? A. 1952 in Baltimore.

Q. Did you know Mr. Louis Sitaras of Baltimore in Greece? A. I remember him a little bit.

Q. Where did you meet him in Greece? A. In Greek school.

Q. You mean you went with him in the same school? A. Yes.

Q. When you first met him in Baltimore, did you meet him on your own or through Mr. Petite? A. With Mr. Petite I found Louie.

Q. Do you know Father Morkides? A. Yes.

Q. Where did you meet him? A. In Philadelphia.

Q. Was anyone with you when you met him? A. Yes.

Q. Who? A. Mr. Louis Sitaras and Pete Pahides.

Q. When he said "Louis Sitaras" does he mean Louis Sitaras of Baltimore or Louis Sitaras of Marcus Hook? A. Marcus Hook.

Q. Do you remember going to Wilkes-Barre, Pennsylvania with Mr. Petite? A. Wilmington.

He says what kind of state? What kind of state? Wilmington?

Q. I am talking about Wilkes-Barre, Pennsylvania. A. Oh, Wilkes-Barre, yes.

Q. Why did you go there with Mr. Petite? A. We went there to find Father Papavatos, a priest.

Q. Why did you want to find Father Papavatos? A. Because he says he christened me, Father Papavatos. He was a priest in Philadelphia.

Q. Who said that Father Papavatos christened you when he was a priest in Philadelphia? A. Mr. Petite.

Q. And when you say "christened you" you mean christened you as George Kostatos or John George Sitaras? A. I was only baptized once in Greece as Kostatos.

CROSS EXAMINATION

By Mr. Flynn:

Q. What day did you arrive in Baltimore? A. 1951. November or October, I can't remember.

Q. The day that you arrived in Baltimore, is that the day that you left the ship? A. Yes.

Q. Is that the day that the ship chandler came on board, was it, that you talked to him and asked him if he knew Mr. Petite? A. Yes.

Q. What did he say his name was? A. John Mitsos.

Q. John Mitsos. And what time did you testify that he came on board that ship? A. What time I don't remember. Maybe it was ten o'clock in the morning; maybe it was in the afternoon; I don't remember.

Q. I thought you were rather positive about that.

(The Court) He gave the time that Mr. Petite came to the ship.

(Mr. Flynn) Yes, sir, but he said also, I thought—

(The Court) My note says that the ship chandler, Mr. Mitsos, came aboard, but I don't have any note of the time. He said that Mr. Petite came at 8:30 or 9 p. m.

Q. (Mr. Flynn) Now, then, you did testify that Mr. Petite came on board that ship about 8:30 or 9 o'clock that evening? A. Yes.

Q. Now, you talked to Mr. Mitsos and you asked him whether or not he knew Mr. Petite?

(The Interpreter) Read the question.

(The last question was read by the Reporter.)

(The Interpreter) Yes.

Q. (Mr. Flynn) And you asked him, as I understand it, to have Mr. Petite come to see you on the ship? A. I told him I wanted to see Mr. Petite, and he asked, "What are you to Mr. Petite?" And I told him just that way that he is an uncle of mine.

Q. Did you see Mr. Mitsos in the courtroom this morning?

(The Interpreter) What's the question, please?

(The last question was read by the Reporter.)

A. If I seen him, I don't recognize him; I only saw him once.

Q. (Mr. Flynn) Now, you are sure that you left that ship between 8:30 and 9 o'clock or thereabouts on the day with Mr. Petite, on the day that the ship arrived in port? A. Yes.

Q. Now, the next morning when you arrived at the dock, you said that you left about 8 o'clock in the morning, as I recall it, that the ship was gone, that you took Mr. Petite's word for it.

Now, I don't want to get this too long, but isn't it true that you couldn't see whether the ship was gone or not? A. I didn't know nothing. This was the first time, I was a stranger in America, and I didn't know nothing where the ship was, I didn't know.

Q. Wouldn't you know the ship if you saw it, the SANTA IRENE? Wouldn't you know it if you saw it? You had looked at it? A. Now, if I saw it?

Q. Any time, A. I was only on it seventeen days.

Q. Wouldn't you know that ship? Wouldn't you recognize that ship on the day after you got off of it after having been on it seventeen days? A. I would have recognized it. It had a lettering on it, SANTA IRENE.

Q. Well, don't you know that Mr. Petite, didn't you say, he took you back to the dock where you got off the ship? Wouldn't you recognize the dock if you say he took you back there? A. No.

Q. Will you tell the ladies and gentlemen of the jury how you found your way back to that dock on the first trip that you took with the other seamen? A. I didn't go any place the first time. I just got outside and walked around the ship.

Q. Now, I understand that you testified that you stayed with Mr. Petite in his home for fifteen or twenty days. That's what you testified to, is it not? A. Yes.

Q. Now, how many rooms were there in Mr. Petite's house?

(The Witness) (In English) I think four upstairs; I am not sure.

(Mr. Flynn) He said in English four upstairs; I'm not sure.

(The Interpreter) In Greek his answer was four rooms upstairs; I'm not sure.

Q. (Mr. Flynn) How many people lived in that house? Do you know? A. I know that the night I went there was in the house his son Andreos, Mr. Petite, his wife, and his mother-in-law.

Q. During those fifteen days that you stayed at Mr. Petite's house, did you do any work? Did you go out and get a job? A. I went and fixed some house of his mother-in-law, some steps, some such things.

Q. Well, now, where did you meet his mother-in-law? A. In Mr. Petite's house.

Q. Didn't you get a job working at a tavern out on 40th Street and Roland Avenue? Weren't you working out there? A. Not a tavern, hot dog lunch.

Q. Hot dog lunch. Well, you were working there, weren't you? A. Yes.

Q. When did you go to work at this place? A. I don't remember how many days passed. I went anyhow in 1951. I don't remember the date.

Q. How long had you been working at this place when you were arrested? A. The first day I went to work there the Immigration caught me, the very same first day I went there.

Q. Well, now, you were arrested on the 23rd of October and you landed here on the 12th of October. Now, if you stayed at Mr. Petite's house the length of time you said you did, fifteen or twenty days, which is impossible, but

you were arrested out at this tavern or this hot dog lunch place?

(Mr. Pierson) I object to that. This doesn't have to be a tavern.

(Mr. Flynn) Don't you have to have a liquor license to be a tavern?

(Mr. Pierson) I think so.

(The Court) Well, I think you better break the question up, Mr. Flynn. There are quite a few points in it, and I think he could understand the translation better if you break your question up into several parts.

Q. (Mr. Flynn) Where were you arrested? What place? A. Roland Avenue.

Q. Whose place was it? A. Harry Nicholas Francos.

Q. What kind of a place was it? A. New Times Restaurant.

Q. New Times Restaurant. Well, I got the tavern and restaurant mixed up. A. On 40th and Roland Avenue.

Q. Now, you say the very first day you went there, was that when you were arrested? A. That is what I believe. I don't remember well. It was the first day.

Q. What address did you give to the Immigration and Naturalization people when they arrested you? What did you give as your address where you were living? A. I gave that I lived at the house of Mr. Petite's mother-in-law; I don't remember the address.

Q. Well, why did he give the address of Mr. Petite's mother-in-law when he said now that he was living with Mr. Petite? A. I don't know. Mr. Petite told me that the house was his mother-in-law's.

Q. But did you live at that house? A. Yes.

Q. Who lived in that house with you? A. Mr. Petite, his wife, his son Andreos, his mother-in-law was there too.

Q. I am not talking about that; I am talking about when he said he was living in his mother-in-law's house on Northern Parkway, which is where it was, wasn't it Northern Parkway? A. I don't know.

(The Court) I think you may be talking at cross-purposes.

Ask him is the mother-in-law's house, ask him is the address he gave on Northern Parkway the house where he spent the first night when Mr. Petite took him, or was it another house. A. What address? I lived on Hamilton Street. I never lived any place else.

(The Court) That doesn't straighten it out, does it? Where did Mr. Petite live?

(The Interpreter) There.

(The Court) Where? What does he mean "there"? Where?

(The Interpreter) Where? At his house.

(The Court) Where was Mr. Petite's house? Where did Mr. Petite live?

(The Interpreter) To go there, I know how to go. I don't know the street. I think it's Hamilton Street.

(The Court) Well, ask him had he moved from Mr. Petite's house to some other house before he was arrested or was he still living in the same place he had been living all along. A. I don't remember.

(Mr. Flynn) What was the last answer?

(The Interpreter) I don't remember.

(The Court) Ask him whether he was still living in the same house he had been living in with Mr. Petite or whether he had moved to another house before he was arrested, which is what I asked him, and he says he doesn't remember.

(Mr. Flynn) Well, the point is, and I don't want to prolong this, Your Honor, but I want to know why he gave this address on Northern Parkway when he was arrested.

Q. (Mr. Flynn) Ask him why did he give that address? A. Because I went there with Mr. Petite's mother-in-law and painted some chairs, but when I went, got out of jail I went back there and the house had been sold and his mother-in-law didn't live there any more.

Q. Ask him, isn't it a fact that when you were arrested that you told the Immigration Officers that you lived on Northern Parkway and they took you out to Northern Parkway and found the house vacant? A. We went to that house; there was nobody there. The house was closed.

Q. Did you ever live — and I mean by "ever" during the time after you got off the ship up until the time you were arrested, did you ever live at 805 36th Street? A. 805, I lived there, I lived there after I got out of jail. I didn't live there before I went to jail.

Q. What was the name of the lady with whom you lived or who owned the place where you lived? A. I don't know it.

Q. Was it Mrs. Keener? A. I don't know what it was. It was a man and a woman, a Mr. and Mrs. They lived together. I lived there but I never asked them their names.

Q. Did you get receipts for the rent that you paid them? A. Yes, they gave me.

(Mr. Flynn) Let me see the bills.

Q. (Mr. Flynn) I show you here four pieces of paper which purport to be receipts for rent. Did you ever receive those from Mrs. Keener? A. These are mine. These are mine. These receipts are mine. The woman to whom I gave the rent gave them to me.

I gave them to Mr. Petite. This receipt I notice says 1951. I left this particular address in 1953 because I had

gone to Chester and remained there and returned from Chester.

Q. You ask him again. He may have mentioned this. He says he gave these to Mr. Petite.

Ask him again if that is true that he gave them to Mr. Petite. A. He wrote me the time that I had gone to Chester that I owed rent to this woman. I didn't owe her rent. I only owed her for a telephone call, and I sent him back these receipts to show him that I didn't owe the rent. I had paid a whole month's rent and lived there ten days.

Q. May I look at them. I want to call your attention first of all that this first receipt is dated October 13, 1951, and that is the day you got off the ship. A. This receipt, this receipt, I never lived there then.

The witness says, the witness asks, October 13th, and I told him "Yes", and he showed me a piece of paper, and he says, "What is the date on this paper," October 24, 1951.

The Immigration gave me that paper when I got out of jail when I went to Immigration.

Q. I don't know what that is. A. He points to this and says "After I got this I went to live to that house."

Q. Well, let's go back to this. You are sure that you sent these to Mr. Petite?

(The Court) You mean those particular papers?

(Mr. Flynn) These particular papers.

(The Court) Or papers like them.

(Mr. Flynn) These particular papers. He said these papers he sent to Mr. Petite.

(The Witness) (In English) Not this paper. I had this paper. 1953.

(The Interpreter) He said not these papers. I sent papers dated 1953, not 1951.

Q. (Mr. Flynn) You say you did not live in this house in 1951?

(The Court) He said he went there after he got out of jail.

(Mr. Flynn) 1953, he said it was.

(Mr. Pierson) No.

(The Court) He said he went there after he got out of jail in 1951, that the receipts that he sent were the 1953 receipts. That is what he said, as I understood his testimony to have been just now, but it's for the jury to say, or you can have it read back.

(Mr. Flynn) It is my understanding, sir, that he identified these receipts as the receipts for rent that he said in 1953, but they are dated 1951.

(The Court) He says the ones he sent Mr. Petite were dated 1953.

(The Witness) (In English) 1951 October, I lived in that house, after 24 October.

Q. (Mr. Flynn) After 24 what?

(The Interpreter) October 1951.

Q. (Mr. Flynn) Do you know that man there (indicating)? A. Yes.

Q. Didn't you give these receipts to him, to that man? A. No.

(Mr. Pierson) May I ask to have the man identified?

(Mr. Flynn) What is your name?

(Mr. Moskonas) Nicholaos John Moskonas.

(The Court) Mr. Flynn, do you want to mark those for identification?

(Mr. Flynn) Yes, I would like to have them marked for identification. They have already been marked for identification in another case.

Mark these for identification.

(The Court) So that if they are referred to again we will know what they are.

(The Clerk) Defendant's Exhibit No. 1 for identification.

(Receipts were marked Defendant's Exhibit 1 for identification.)

(Mr. Flynn) Now, may it please the Court, if I may, may I read into the record the dates of each one of them?

(The Court) Well, they haven't been admitted yet, they haven't been admitted in evidence yet. If they are admitted in evidence, you certainly may read them.

(Mr. Pierson) I object. My objection is that this man has not identified them. These are just marked for identification. There may be a further explanation as how they came to be, and if they weren't given to Mr. Petite they may have come from some other source, but I think they should be further identified.

(The Court) Well, do you object to their being admitted in evidence?

(Mr. Pierson) Yes.

(The Court) Since the witness has testified about them do you object to the jury seeing them?

(Mr. Pierson) No, Your Honor, I do not.

(The Court) All right.

Mr. Flynn, you can show them to the jury, and let the jury pass them around. Mr. Pierson doesn't object to the jury seeing them, he says.

(Mr. Flynn) But they are not going into evidence.

(The Court) Well, they have not been admitted in evidence yet, and Mr. Pierson says that he does—

(Mr. Pierson) If you follow it up.

(The Court) If you follow it up.

(Mr. Flynn) We intend to follow it up, sir, by the witness who got them from this man and knows all about them.

(The Court) All right.

(Mr. Pierson) I object to anybody seeing them at this time. I think we should wait until they are properly admitted if they are going to be admitted.

(The Court) Do you want to ask him any more questions about this?

(Mr. Flynn) Yes. Not right now about this.

(The Court) Then I don't see any harm in your waiting until they are identified.

(Mr. Flynn) All right.

Q. (Mr. Flynn) On the occasion of your hearing — and I am talking about the first hearing that you had after your arrest, which was on October 23, 1951 — do you remember the hearing that you had before Mr. Carney on on that day, the day that you were arrested?

(Mr. Pierson) Just a minute. I object to that question. He had no hearing before Mr. Carney in October.

Q. (Mr. Flynn) Did you have a hearing on October 23, 1951, the day you were arrested?

(Mr. Pierson) It was Mr. Phillips.

(Mr. Flynn) Mr. Phillips was the hearing officer but Mr. Carney was present.

(Mr. Pierson) That is not my understanding. I don't think that is correct.

(The Court) Well, do you have any records?

(Mr. Pierson) Yes.

(The Court) Just compare your records and see if you are talking about the same paper.

Would the jury like to take a five-minute recess?

(The Foreman) Yes.

(The Court) We will try to finish up by four o'clock anyhow.

(Thereupon, the jury left the courtroom, after which a short recess was taken.)

(The Court) See whether there was a statement made by somebody and whether that somebody was Mr. Carney or somebody else.

Off the record.

(Discussion off the record.)

(Thereupon, the jury returned to the courtroom.)

By Mr. Flynn:

Q. Do you remember the hearing that you had before Mr. Phillips, the Immigration and Naturalization Officer? He was the Acting Immigration Inspector on October 23, 1951, the day that you were arrested. A. Not for sure. I was arrested. I am not sure of the date.

Q. Well, do you remember the date that you were arrested, that on that date you had a hearing before the Immigration and Naturalization Service? A. No.

Q. Well, there was a hearing; no question about that.

(Mr. Pierson) There is a question about it. He didn't have a hearing. He gave a sworn statement.

Q. (Mr. Flynn) Well, let's say "sworn statement". A. I remember. I don't remember the date I gave some questions, I gave some answers to some questions.

Q. Now, on the date that you were arrested, didn't you tell in answer to questions the very same story about yourself, your family, and all the details, the same story that you gave subsequently at the hearing that you have already testified about? A. I don't remember.

(The Court) If you have the statement—

(Mr. Flynn) Yes.

(The Court) Why don't you read it to the jury? If you want to offer it in evidence, the jury can see whether it is the same or not.

(Mr. Flynn) Of course, the only thing I have, sir, is a copy that the Government has been good enough to let me have.

(Mr. Pierson) I have no objection to that.

As a matter of fact, I was going to put it in anyhow.

(The Court) Why don't you read it to the jury and let the interpreter read it quietly to the witness at the same time and then you will be in a position to ask him any questions you want.

(Mr. Flynn) May I ask this? This may clear it up.

Q. (Mr. Flynn) Did you know Mr. Anestes Kampos? A. I met him at Immigration the day I was apprehended by Immigration.

Q. Was he not the interpreter that interpreted your statement to the Immigration on the day that you were arrested? A. Yes.

Q. Well, now, isn't it also a fact that you asked Mr. Kampos to get you a lawyer who could understand Greek? A. No.

Q. Did you have any conversation with Mr. Kampos after the hearing? Did you ask him to do anything for you? A. No.

Q. Isn't it a fact that Mr. Petite did not in any way contact you or see you after you got off the ship or after you landed in the United States until after you were arrested and after this hearing?

(The Defendant) Just a minute. He did not get the question, sir.

(Mr. Flynn) Well, just a minute. Maybe I can clear that up.

Q. (Mr. Flynn) Isn't it a fact that you did not in any way get in contact with or see Mr. Petite after you arrived in the United States on October 12th until after you were arrested on October 23d?

(Mr. Pierson) I object to that question because it seems to me to be too complicated.

(The Court) I don't think it is too complicated, Mr. Pierson. I will overrule the objection.

Isn't it a fact that after he arrived in the United States he did not see Mr. Petite until after he was arrested?

(Mr. Pierson) That is what I say simplifies it, but the other question was confusing.

(The Court) Do you accept the Court's question?

(Mr. Flynn) Yes.

(The Court) Well, I think it is right that a simpler question is going to be clearer, easier to answer.

(The Interpreter) (After conversing with the witness.) That's a lie.

Q. (Mr. Flynn) Isn't it a fact that the first time that you saw Mr. Petite or he saw you after you arrived in the United States was when he saw you in the Baltimore City Jail? A. That's a lie.

Q. Did you consider Mr. Petite your lawyer? A. I considered him from the first day I got out into the United States as my benefactor.

Q. Did you ever pay Mr. Petite any fee for any work, any legal work that he ever did for you in representing you before these hearings? A. No.

Q. Why did you consider him your benefactor?

(The Interpreter) Is that present or past?

(Mr. Flynn) Well, Your Honor, I—

(The Court) Well, it's got to be one way or the other. The testimony as I understood it was past.

(Mr. Flynn) Past.

(The Court) Past tense.

Now, do you want to ask the question in the past tense or present?

(Mr. Flynn) Past tense when all this was going on.

(The Interpreter) I will tell you because at the time that we got out together off the ship to go to his home to met his family, I was obligated to him because I didn't have a penny on me. He gave me money; he gave me clothes so we could go back the second day to the ship.

After that the ship had left and I remained here. He helped me up until the time I got a job. He gave me food, clothes, lodging, everything. I obligated to him for that.

Q. (Mr. Flynn) Is there any reason that you know of why Mr. Petite should have done the things for you that you have said he has done when you were practically a stranger to him? A. I had seen him twice in Greece.

Q. When was it that you made up your mind to turn on Mr. Petite and change this story?

(Mr. Pierson) Objected to.

Q. (Mr. Flynn) When?

(The Court) I don't think that's a proper question, Mr. Flynn, of turning on Mr. Petite.

(Mr. Flynn) Well, I certainly can ask him—

(The Court) I think you can ask him a question. I think you can produce any facts that you want without characterizing them.

(Mr. Flynn) Well, let's put it this way:

Q. (Mr. Flynn) When did you make up your mind to change your story about Mr. Petite?

(Mr. Pierson) I object to that.

(The Court) I don't understand that it was changing his story. I don't understand that he has ever told any different story.

(Mr. Flynn) Oh, yes, he has testified before all these hearings differently than he has testified here.

(The Court) You mean as to Mr. Petite's part in it, there is not yet any evidence that there was a change.

He testified as to a set of facts before the hearings, and he said he did it at Mr. Petite's suggestion, and Mr. Petite told him to.

Now, you are asking him when he decided to change his story as to who he was?

I don't understand there has ever been any different story about what his relations to Mr. Petite were. If there has been, you can ask him about it. But perhaps we are talking at cross-purposes.

Do you claim he changed his story about who he was and where he was born or when he changed his story about his relations with Mr. Petite?

They are two separate things.

Q. (Mr. Flynn) Well, may I put it this way: May I ask this question?

When was it that you made up your mind with respect to the statement that Mr. Petite had caused you and prompted you to swear falsely?

(The Court) You want when he made up his mind?

(Mr. Flynn) Yes.

(The Court) When he first ever told anybody.

(Mr. Flynn) That may be better.

(The Court) It might be easier to approach the question if he ever told anyone for the first time and then when he made up his mind about it. You can ask it that way.

(Mr. Flynn) Well, may I ask this:

Q. (Mr. Flynn) When was the first time that you ever told anyone? And to whom did you tell it that Mr. Petite had coached you, or had caused you to commit perjury? A. I never told anyone except in Court in Philadelphia, I told the truth.

(Mr. Flynn) I am trying not to prolong this, Your Honor.

(The Court) I think you ought to finish the cross examination.

(Mr. Flynn) Yes.

(The Court) Unless some of the jurors have important engagements, I think we should finish the cross examination.

Q. (Mr. Flynn) Do you mean to tell His Honor and the ladies and gentlemen of the jury that the first time that you told anyone that Mr. Petite caused you to make a false statement, to commit a falsehood, was in the Court in Philadelphia? A. Yes.

Q. Do you mean to tell us that you did not tell this to any of the officers or employees of the Immigration and Naturalization Service before you testified in Court in Philadelphia? A. Yes.

(Mr. Pierson) Yes what?

(The Interpreter) In Court I said it. That was the first time.

Q. (Mr. Flynn) Have you ever been prosecuted for perjury? A. I was tried in Philadelphia.

Q. You were tried in Philadelphia for what? Not for perjury. You were tried for conspiracy. No place else.

(The Defendant) He said he was not convicted of anything.

(The Interpreter) I was never tried any place else.

(The Court) Let the witness repeat it.

Mr. Gianakos, did you hear it? Just a minute. We have a third interpreter here, Mr. Gianakos, who is the Assistant United State Attorney, and if you disagree, you can see what we can do about it.

(The Interpreter) I was never tried for perjury in any other court except in Philadelphia. I have never been in any other court in my life even in Greece.

(The Court) Do you disagree with that, Mr. Petite?

(The Defendant) It is not responsive to the exact question that Mr. Flynn asked.

(Mr. Pierson) It's just a question of interpretation and whether the interpretation is a hundred percent correct.

(The Court) Well, if it is not responsive, Mr. Flynn can move to strike it, if it was accurately translated.

(Mr. Pierson) Yes.

(The Court) Which is the concern of the interpreter.

I understand Mr. Petite's point is not that it was not accurately interpreted but that it was not a responsive answer.

(The Defendant) Yes.

(The Court) Which is the responsibility of his counsel.

(Mr. Flynn) Your Honor, I don't want to prolong with this man, but it looks like we are not going to get any place. The record which is in Court will show that he was not prosecuted for perjury in Philadelphia.

(The Court) Well, I think the best thing to do about that now that the Philadelphia proceedings have started, have been brought in, is to see if you and Mr. Pierson can agree upon a statement that shall be made to the jury about the Philadelphia proceedings.

If you can't agree on it, the Court may have to get into it and attempt to work out a statement.

I think that the exact facts so far as both sides may agree they should come in should be put before the jury. It may be that some statement should be made or some records developed to clarify the point that Mr. Flynn is making.

(Mr. Pierson) Your Honor, I suggest that the cross examination be recessed until tomorrow morning. We can't finish with him.

(The Court) Under the circumstances it would be better to take a recess.

(Mr. Flynn) I am sorry that I prolonged it.

(The Court) Well, that's all right. You have a perfect right, and it is the Court's responsibility because of the question that has been raised as to the nature of the Philadelphia proceedings is one which was not mentioned in the opening statements by either side, and I didn't know whether they would come into the case or not, and I was not going to inject them in unless either side did.

(Mr. Flynn) I don't think they should be in the case, Your Honor.

(The Court) The defendant has injected the question.

(Mr. Pierson) Well, if it should be in partially, it should be in full.

(The Court) Well, let's discuss that after the jury goes and see if you and Mr. Flynn can agree on it.

The jury are excused until tomorrow morning at ten o'clock.

* * * * * *

(St. Tr. 127-128):

(Mr. Pierson) Mr. Kostatou was on the stand under cross examination, as I recall, Your Honor.

(The Court) Did counsel agree upon any statement that was to be made or any additional questions that were to be asked of this witness?

(Mr. Flynn) If Your Honor please, I will not ask any additional questions along that line and of course, it wasn't in response to any question of mine. We will object to any further development of it, but we will make an objection on that at the proper time.

Do you have any redirect?

(Mr. Pierson) Well, I intended to ask some questions on redirect with reference to the Philadelphia proceedings.

(The Court) Will counsel come to the Bench?

(Thereupon, there was a discussion at the Bench, during the course of which the following occurred:)

(Mr. Pierson) I would like to make a proffer.

(The Court) You go ahead and make your proffer.

(Mr. Pierson) I offer to prove that this witness plead guilty in Philadelphia to conspiracy to commit perjury.

(Mr. Flynn) That's true. There was no perjury in Philadelphia at all, except there was a case of subornation of perjury, which was thrown out.

(The Court) Conspiracy to commit perjury.

(Mr. Flynn) That was thrown out by the United States Attorney.

(Mr. Pierson) I will have to check that. I would like to have an opportunity to get that correct.

(The Court) All right.

(Mr. Pierson) And the co-defendants, among the co-defendants.

(The Court) I will sustain Mr. Flynn's objection to that proffer, but I will instruct the jury that with respect to

any comment about the proceedings in Philadelphia, that those proceedings have no bearing upon this case.

(Thereupon, the trial was resumed.)

(The Court) Members of the jury, there has been some question asked, some comment about some proceedings in Philadelphia in connection with this matter. I have ruled that those proceedings in Philadelphia have nothing to do with this case one way or the other, and that you shall dismiss from your minds anything that has been said about any proceedings in Philadelphia. They have nothing to do with this case at all one way or the other.

* * * * * * *

(St. Tr. 129-136):

CROSS EXAMINATION (Continued)

By Mr. Flynn:

Q. Where are you living? A. Warren, Ohio.

Q. Do you know what county in Ohio that is?

(The Interpreter) May I suggest, I am trying to think of the word for "county":

(After conferring with the witness.) I don't know.

Q. (Mr. Flynn) He does live in Warren, Ohio? A. Warren, Ohio, yes.

Q. How long have you been living in Warren, Ohio? A. Two and a half years.

Q. Isn't it true that you have traveled to many places in the United States since you have been here off the ship? A. No, I haven't traveled to a lot of places in the United States.

Q. Haven't you been in Florida? A. I went eight days in 1953.

Q. Have you been to Atlantic City? A. Yes.

Q. You have been in Bethlehem, Pennsylvania? A. I went there; I didn't live there, one trip I took.

Q. Well, now, you have while you were living in Warren, Ohio, you have been hurt in an automobile accident, have you not? A. Yes.

Q. How long were you in the hospital? A. About fifty-eight days, I believe.

Q. Now, you have a lawyer represent you, do you not, in Ohio in connection with this accident? A. Yes.

Q. What is his name? A. John Ticoras.

Q. Now, is that John W. T-i-c-o-r-a-s? A. I don't know how it is spelled, but if I see the name I will recognize it.

Q. Show him that (indicating paper). Is this the name? A. I don't know. I don't know. It is different. It may be -c-h. I don't think so.

(The Court) Well, he had a lawyer representing him.

(Mr. Flynn) Your Honor, I want to follow that up.

(Mr. Pierson) We don't make any objection to the name.

(The Court) Is his name Ticoras or something like that?

(The Interpreter) John Chiporas.

Q. (Mr. Flynn) Would you please have him sign his name to that piece of paper?

(The Court) Whose name?

(Mr. Flynn) His name.

(The Court) Sign his own name?

(Mr. Flynn) His own name.

(Mr. Pierson) I would like to know the purpose of this. If this is the same paper that is being offered, it may be that he will recognize his signature.

(Mr. Flynn) Well, it may well be that he will not recognize his signature; so I want to see what his signature is.

(The Court) I think Mr. Flynn may proceed in this way if he wishes to.

(The Interpreter) The question from the witness is, in English or in Greek?

Q. (Mr. Flynn) The way he usually signs it, in English.

(Witness signs paper.)

(The Interpreter) My name is Georgios Modestou Kostatos in Greece. Over here for Social Security it is George Kostatos, the difference in Greek is that Kostatos is spelled with a K and here I use a C because we are a lot of Kostotoses here in the United States so I can be identified by using the C to distinguish.

(The Court) Is there a C in the modern Greek alphabet?

(The Interpreter) No, sir, only a K.

(The Court) When I studied Greek, there was only a K.

(The Interpreter) That's why I use a K on my name, Konstantine.

Q. (Mr. Flynn) Show him this paper. Is that your signature? A. Yes.

Q. That is your signature? A. Yes.

Q. Where did you sign this paper? A. I will tell you. That paper, I was in the hospital and I was dying. When I got out, when I got out on the 7th of January from the hospital, after a month and a half, Mr. Chiporas telephoned me to go to his office so we could go to the insurance company and I went.

I think it was April when I went. I went to the office, and instead of going to the insurance company, they brought these papers and I signed them without knowing what they were.

Q. Do I understand you to say that in your lawyer's office, that your lawyer presented papers to you, and you signed them without knowing what they were? A. Yes.

Q. Now, was there not present at the time you signed this paper John Condoleon? A. Yes.

Q. And isn't Mr. Condoleon the president of your church? A. Yes.

Q. And did he not discuss this paper with you before you signed it? A. No.

Q. Ask him if this isn't the signature of Mr. Condoleon? A. It is signed John Condoleon; I am not familiar with his signature; but anyhow he signed papers there.

Q. Would you ask him please who was the other person who signed the papers?

(The Interpreter) The other person?

Q. (Mr. Flynn) The other person who signed. There is one more left. One is his lawyer and this other man. Who was the other man? A. Him I don't know. That day I saw him there. I don't know him.

Q. When you signed this paper, you made affidavit to it, did you not? You swore to it? A. No.

Q. Show him that affidavit and ask him whether or not that was not read to him at the time he signed the paper? A. No, it was not, no.

Q. This man is still your lawyer, is he not? A. Yes.

Q. And isn't it a fact that your lawyer called Mr. Petite in your presence last Friday night when you were there in Warren, Ohio? A. From the office of my lawyer, no.

Q. From any other place? A. My lawyer came to my house there where I lived. He telephoned. I don't know what he did.

(Mr. Flynn) If your Honor please, I desire to offer this paper in evidence. It's an affidavit made by this man before John W. Ticoras, whom he said was his lawyer who is also a Notary Public.

I will pass it up to Your Honor.

(Mr. Pierson) I object to it on the ground that this man said he signed something not knowing what it was, unless it is further identified.

(The Court) The witness said he signed this paper but he said he didn't know what he was signing. I think the paper may be admitted in evidence, although the affidavit, the certificate may not be admitted because he said he didn't know anything about it, that that wasn't read to him.

(Mr. Flynn) No, but it's a complete affidavit and it was in the presence of his lawyer.

(The Court) I don't know whether Mr. Pierson objects to the affidavit part.

(Mr. Pierson) I do, yes, because he said he didn't make an affidavit.

(The Court) All right.

(Mr. Pierson) It may be that they will produce the Notary.

(The Court) It's in the form of an affidavit.

I rule that the part that he signed down to his signature may be read to the jury.

I call Mr. Flynn's attention to the fact that he just recently objected to the Philadelphia proceedings being mentioned any further. This affidavit discusses them. I will say to Mr. Flynn that if you offer this affidavit you have opened the door, and Mr. Pierson may walk through it with further evidence.

(Mr. Flynn) We'll take that chance, Your Honor.

(The Court) All right, sir.

I will admit it down to the signature of the witness, but I will not admit the third page unless Mr. Pierson will waive his objection to the third page in view of my ruling on the first two pages.

(Mr. Flynn) May I read it to the jury?

(Mr. Pierson) I waive my objection. I think if it's going to be read the whole thing should be read.

(The Court) All right. Then I will admit the whole thing.

(The Clerk) Defendant's Exhibit No. 2.

(Mr. Flynn) Do you want to mark it, and then I will read it.

(Statement from Warren, Ohio, was marked Defendant's Exhibit 2.)

* * * * * *

(St. Tr. 140-142):

REDIRECT EXAMINATION

By Mr. Pierson:

Q. Now, Mr. Kostatos, I believe you stated that the first place that you went to work was at 40th Street and Roland Avenue at the New Times Restaurant; is that correct? A. Yes.

Q. Who are the owners of that place? A. In 1951 they were two brothers, Harry and Nicolos Frankos, two brothers.

Q. How did you get the job? A. Mr. Petite got me the job.

Q. Was Mr. Petite related to these people or to either of them? A. Yes.

Q. In what way? A. Nick Frankos and Mr. Petite are married to two sisters.

Q. Did you have any money when you left the ship? A. No, nothing.

Q. Did you have any money when you went to work at the New Times Restaurant? A. I was holding about fifty dollars.

Q. Where did you get the money? A. That money someone sent me from Atlantic City.

Q. Does he know who sent it to him? A. Yes, a brother of my father sent it to me, but I don't know him at all. I just met him here.

Q. Where did you receive this money? A. That check Mr. Petite gave to me.

Q. Was that at his home or at his office? A. I don't remember if he gave it to me at his house or in the office; I don't remember.

Q. Do you know how your father's brother found out that you were in the United States? A. Yes.

Q. How? A. Mr. Petite called that your nephew is here. What's his name? George, he said.

When my uncle left from Greece, I was small. In fact, I wasn't even born. After about fifteen days or so the check came, and Mr. Petite gave it to me, travelers's check, fifty dollars in the name, I think so, of John Sitaras.

He talked to me — meaning his uncle — but refused to see me because he wanted to have nothing to do with me because I had changed my name and I was no longer the Kostatos.

Q. What did you do at the New Times Restaurant? A. I was a dishwasher.

Q. How many hours a week did you work? A. Six days.

Q. How many hours a day? What time? A. I went in the morning sometimes eight, sometimes nine, sometimes ten.

Q. Are you speaking of the morning, sometimes eight; sometimes nine, sometimes ten? A. I went all the days at eight o'clock in the morning and worked eight to four, sometimes five, except Sunday the place was closed, and we opened it up Sunday night.

Q. What was your weekly salary? A. In the beginning when I went in there I was getting $19 a week. Afterwards, they put me $25 — $24. That is $25 or $24, not twenty-five decimal twenty-four.

Q. Do you know who put up the bond for you to stay in this country during the deportation proceedings? A. Mr. Petite.

Q. Was any charge made to you by Mr. Petite for this bond? A. No.

Q. Did you pay him anything for putting up the bond? A. At the time he put the bond, I paid nothing; later I paid $125 for interest. The money wasn't his. He had gotten it from someplace else.

Q. Is that what Mr. Petite told you? A. He said to me, "I borrowed the money; this isn't my money." I don't know.

* * * * * * *

(St. Tr. 143-144):

Q. (Mr. Pierson) After both hearings before Mr. Carney.

(The Interpreter) Okay.

Q. (Mr. Pierson) And before you went to court in Philadelphia, did you tell anyone from the Immigration Department this story that you have told on the stand today? A. Yes.

Q. Whom did you tell? A. I went to Philadelphia to Immigration. I was called in there, and I went and I told it to Mr. Hostetter.

Q. Does he see this man in Court? A. Yes.

Q. Will you point him out? A. This (indicating).

Q. He is pointing to Mr. Hostetter, who is sitting at the trial table with me.

Did you tell him the whole story? A. No, they showed me some papers and they asked me my name, George John, George John.

I am not John; my name is George, I told him.

Yes, I clarified the question to the extent of rephrasing it, did he tell the story to him and he said yes, in 1954.

Q. Did you at that time tell them that you — to Mr. Hostetter — that you were really George Kostatos and not John George Sitaras?

(Interpreter conferred with witness.)

Q. That you were George Kostatos and not John George Sitaras? Did you tell him you were George Kostatos and not John Sitaras? A. Yes, sir, I told him I am George Kostatos.

* * * * * *

(St. Tr. 146-151):

Q. (Mr. Pierson) Now, Mr. Kostatos, do you read and write English?

I will withdraw that question.

Are you able to read English? A. English I read, but I don't understand.

Q. Can you read American? Can you read American? A. Greek do I read or English-American do I read? Which are you asking me?

Q. I asked you about English. Do you read Greek? A. Greek I read, yes.

(The Court) Well, I don't understand that. I don't understand what he does. Can he read English? He said he can read it, but he can't understand it.

(The Interpreter) The English, I know how to read it but I don't understand it. I have learned the alphabet, and in that way I can read it.

Q. (Mr. Pierson) You mean that you have learned the English alphabet? A. The English alphabet, yes, I have learned it.

Q. Were you able to read this statement which you signed and which the defendant introduced into evidence? A. No, those sort of things I can't read. I can only read plain things, simple things.

Q. When did you find out that you had purportedly made the statements contained in this document? A. I didn't find out right away because I was sick. After a while I took a taxi and went to a friend of mine, Pete, the fellow that took me with the car was to a Jim Grille Restaurant, his name, is Nylas, that is, and he read me that paper, and he told me what the paper said inside.

Q. And what did you do then? A. I said to him, "Telephone the Immigration because I have done this without knowing, unknowingly."

(Mr. Pierson) May I have the affidavit?

Q. (Mr. Pierson) Now, Mr. Kostatos, isn't it true that you have given testimony against Mr. George B. Petite in the case of United States against George B. Petite and other people?

(Mr. Flynn) I object to that question, Your Honor.

(The Court) Isn't that in there?

(Mr. Flynn) Yes.

(The Court) You offered it in evidence yourself.

(Mr. Flynn) I did, yes, but we will object to it being brought out and emphasized at this time.

(Mr. Pierson) I will withdraw the question, Your Honor, and I am willing to have the answer stricken out. I have some other questions first.

Q. (Mr. Pierson) Did you on or about February 27, 1958 voluntarily, wilfully, willingly, freely, and without reservation, mental or otherwise declare that the testi-

mony that you gave against George B. Petite was untrue and false?

(Mr. Flynn) Objected to.

(The Court) I think the question is confusing, to ask whether he did declare that. He said he didn't know what is was, and he said he can't read English that well.

It seems to me that the question is, did anybody read it to him or interpret it to him in Greek, and if so did they read it to him either in English or in Greek what is in that paper?

That's the question, did he declare? I don't know whether he declared it out loud or did he sign the paper knowing what it contained.

Did anybody tell him in the way he would understand what was contained in the paper. I think that's the proper question. You can ask him that if you want.

Q. (Mr. Pierson) Mr. Kostatos, did this paper on which you have identified your signature, did anyone read that to you in English? A. It was, it was explained to me in Greek. He is like an interpreter. He read it in English and then in Greek, but I believe he is talking about in connection with the accident.

(Mr. Flynn) Just a minute.

(Mr. Pierson) Well, now, wait a minute.

(Mr. Flynn) He is talking about some accident, not answering the question.

(The Interpreter) In other words—

(The Court) Ask him another question.

Q. (Mr. Pierson) At the time that you signed this paper in your lawyer's office—

(The Court) Let him see the paper you are holding.

(Interpreter conferred with witness.)

Q. (Mr. Pierson) All right so far. Was that read to you in English? A. In there?

Q. Yes. A. In the lawyer's office?

They didn't read me anything; they told me to sign it; it's nothing.

Q. Did they read it to you in Greek? A. No, not at all; they didn't read it.

Q. Did you know what it said when you signed it? A. No.

Q. Do you now know what it says? A. Yes, sir, now I know. Later I learned what it said, what is wrote because I kept one in my pocket and I went and showed it and found out what it said.

(Mr. Pierson) Will Your Honor indulge me a moment?

(The Court) Yes.

Q. (Mr. Pierson) Has anyone from the Immigration Department ever threatened you that if you did not give testimony against Mr. Petite that you would be harmed or injured in any way? A. No.

Q. Has anyone connected with the Government, either from the Immigration Service or from the United States Attorney's Office made you any promises in order to induce you to testify against Mr. Petite? Promises or inducements? A. No.

Q. When you were questioned by the Immigration Authorities, was an interpreter used? A. Where? In Baltimore?

Q. In Baltimore or Philadelphia. A. Always an interpreter, always.

(Mr. Pierson) I think that's all, Your Honor.

(The Court) So there can be no misunderstanding about the verbalism of the questions in this affidavit, I want you to ask him two questions: At the time he signed this paper in Philadelphia or at any time before that,—

(The Interpreter) The paper was signed in Ohio, Your Honor.

(The Court) In Ohio.

At the time he signed this affidavit in Ohio or at any time before that, did he ever tell his lawyer or anyone else that he had lied about Mr. Petite's connection with the matter? A. Never.

(The Court) Did he ever tell his attorney or anyone else that he had been promised something by the F. B. I. or by the Immigration and Naturalization Service if he would testify against Mr. Petite prior or—

(The Interpreter) Any time.

(The Court) Or at any time or that he had been threatened with anything by the Immigration Service or the F. B. I.

(The Interpreter) That was "promised or threatened"? Right? Either one?

(The Court) Yes, promised or threatened.

(The Interpreter) No. I with my lawyer had no business on this subject. We were only dealing on the insurance case.

* * * * * *

(St. Tr. 152-154):

RECROSS EXAMINATION

By Mr. Flynn:

Q. Do I understand you to say that your lawyer after you signed this paper gave you a copy of it? A. I signed about twenty papers. I put one in my pocket and left.

I clarified the question by asking him, the question is did your lawyer hand it to you, and he said, no.

Q. I didn't ask that question, but it's all right.

You did have a copy of it, didn't you? A. Yes, I took it; I had it in my pocket.

Q. Now, I would like to clear up this point. There was some testimony about going to some place, a tavern or eating place, I didn't get quite clear, and talking to somebody about this paper. A. I went to a friend of mine, a countryman of mine, and I gave him the paper to read to me, to tell me what it said.

Q. How long after you received the paper from your lawyer did you go to your countryman to give him this paper?

(Mr. Pierson) Objected to.

(The Court) Overruled.

(Mr. Pierson) The question is whether it was given to him by his lawyer.

(The Court) Well, he was allowed to take it. There is no evidence that anybody made any objection to his taking it.

(Mr. Pierson) I will withdraw the objection.

(The Interpreter) Would you read the question?

(The last question was read by the Reporter.)

(The Court) How long after he got the paper did he go to see this man?

(The Interpreter) I don't remember. I believe it was a Saturday that I signed, and afterwards I think it was three or four days that I went.

Q. (Mr. Flynn) Did you get in touch with the Immigration authorities after you talked to your friend, your countryman? A. The second day Immigration came and got me, asked for me.

Q. You never did report this to the Immigration authorities? A. I told my friend to notify the Immigration, to tell them to come. I told him that. I don't know whether he did or not.

Q. Now, just this last question. I don't want to prolong this.

You say the Immigration two days after came and got you. Got you for what? A. They didn't come and get me; they came and found me.

(Mr. Flynn) All right. That's all.

(The Interpreter) They couldn't take me. I was sick.

(Mr. Flynn) Just one more question.

Q. (Mr. Flynn) Does this Greek lawyer who represents you speak Greek? A. He speaks English but doesn't — he speaks Greek but doesn't know it too well. I don't speak much with him. Once in a while I go there.

Q. He is still your lawyer, is he not? A. Yes.

(Mr. Flynn) That's all. Thank you.

By Mr. Pierson:

Q. Mr. Kostatos, when the Immigration people came and found you, did you tell them about this affidavit? A. I told them these papers that I signed, I don't know what they say, and I gave it to them.

Q. Well, didn't you at that time know, when the Immigration came, what the paper said? A. Oh, yes, I knew.

Q. Did you tell them at that time under what circumstances you had signed that paper? A. Yes.

* * * * * *

(St. Tr. 155-164):

LOUIS S. SITARAS

DIRECT EXAMINATION

By Mr. Pierson:

Q. Where do you live, Mr. Sitaras? A. 1031 Washington Street, Marcus Hook.

Q. Mr. Sitaras, do you know this young man who was just on the stand, George Kostatos? A. Yes sir.

Q. How long have you known him? A. I knew him since 1951.

(Mr. Flynn) If Your Honor please, before we get started on this, we are going to object to the testimony of this man. He is from Marcus Hook. He is the same name stated in the indictment, the same name, a different man, but so far as I know, doesn't know anything about it and he has nothing to do with the situation in Baltimore at all, and if he is going to be put on the stand for the purpose of testifying about something that happened in Pennsylvania or somewhere else, we object to it.

(Mr. Pierson) I think it will develop that he is connected with this matter.

(The Court) Well, if you intend to ask him anything about Philadelphia—

(Mr. Pierson) No, sir, I do not.

(The Court) —come up and make a proffer first, so that the defendant can object to it.

(Mr. Pierson) Well, I'll be glad to tell Your Honor what I intend to ask him.

(Thereupon, there was a conference among the Court and counsel at the Bench, after which the following occurred:)

(The Court) The Court will admit any evidence tending to prove that Mr. Petite knew that Kostatos was Kostatos and not Sitaras.

(Mr. Pierson) Yes.

(The Court) At or before the time he represented Kostatos in the hearings at which Kostatos testified that he was Sitaras.

Now, I will admit evidence tending to prove that.

(Mr. Pierson) That's all I want to offer.

(The Court) And I will overrule Mr. Flynn's objection generally to that line of testimony and give him an exception.

If you have any objection to individual questions, Mr. Flynn, or if you get off into a different line, then make a new objection and I will give a new ruling.

(Mr. Flynn) Yes.

Q. (Mr. Pierson) Now, you said that you knew George Sitaras from 1951; is that correct? A. Yes.

Q. And where did you met him? A. Well, he come in my house.

Q. In Marcus Hook? A. Marcus Hook, yes.

Q. Was he by himself? A. With George Petite.

Q. At that time was there a conversation between you and Mr. Petite or between you and Kostatos or between Kostatos and Petite that you overheard with reference to Kostatos' identity as to whether he was Kostatos or Sitaras.

(Mr. Flynn) Your Honor, I think that is definitely a leading question, sir.

(Mr. Pierson) I will withdraw the question. It is leading.

Q. (Mr. Pierson) What was the conversation?

(The Court) What is the date that you are talking about?

Q. (Mr. Pierson) When was that, Mr. Sitaras? A. That was about October they came to my house with George Sitaras, that's how they introduced to me, George Sitaras.

Q. Who introduced you? A. I mean John Sitaras.

Q. Introduced you? Who introduced you? A. George Petite.

Q. To whom? A. To me.

Q. And whom did he call John Sitaras? A. George Kostatos.

Q. What was the conversation at that time as nearly as you can remember? A. No conversation at all, no talking anything, just come over and see me.

They stayed about fifteen or twenty minutes, they get a drink and they go.

Q. Were you asked to do anything at that time? A. No.

Q. Now, were you later asked to do anything? A. Yes.

Q. When? A. Well, I don't remember exactly, but he come to my tap room.

Q. Who? A. George Petite.

Q. What happened then? A. He told me John Sitaras got in trouble with the Immigration.

Q. What did he say then? A. He told me who was it.

Q. What? A. He told me is John Sitaras, his name is George Sitaras' son.

Q. Did you know John George Sitaras? A. Yes.

Q. Was George living or dead? A. Dead.

Q. Did you know John, the son? A. When he was small.

Q. Do you know whether this man was or was not John Sitaras? A. I don't know.

Q. Did Mr. Petite say anything about that? A. No.

Q. And what were you asked to do? A. Well, he told me that the boy, you know, he told me that if I could help him anything to do something for him, so I told him I would do anything I can.

Q. Was George Sitaras any relation to you? A. He is now.

Q. What? A. He is now.

Q. George? A. George Kostatos?

Q. George Sitaras. Is he any relation to you?

(The Court) You mean the dead man?

(The Witness) John Sitaras.

Q. (Mr. Pierson) George, the man who is dead? A. No, no.

Q. Is he related to you in any way? A. No.

Q. When did you find out, if you did find out, that this man was George Kostatos and not John Sitaras?

(Mr. Flynn) I object to that, sir. The man said he didn't find out anything at all. He said he was introduced to him, and he accepted him as George Sitaras.

(The Court) He said that the man who was introduced to him as George Sitaras was Kostatos.

(Mr. Flynn) That's right.

(The Court) I think he said that. Now, Mr. Pierson can ask him when he learned that the man was not Sitaras but was Kostatos. He seems to know it today, from what he said.

(Mr. Flynn) Your Honor, he has not said that he ever did know that in his direct examination.

(The Court) Well, I understood that he had said that.

(Mr. Flynn) No, sir. He has not said that he ever knew him as anything at all except George Kostatos.

(The Court) That is true at the time he first saw him at the time Mr. Petite came there, but he said that today he knows him as Kostatos.

(Mr. Flynn) I don't think so

(Mr. Pierson) That is what he said.

(The Court) I think that is almost the first thing he said.

(Mr. Flynn) Well, maybe I missed it.

(The Court) I will overrule the objection and allow him to answer the question, the modified question as to when he first learned that the man to whom he had been introduced as John Sitaras was in fact George Kostatos, when he first learned that.

Q. (Mr. Pierson) Do you understand that question, Mr. Sitaras? A. Yes.

Q. When did you first learn that the man to whom you had been introduced as John Sitaras was George Kostatos? When did you first learn that? A. That was about 1953, but I don't remember exactly the time.

Q. Do you go to church? A. Yes.

Q. Where do you go to church? A. Greek Church in Chester.

Q. Who was the priest in 1951 and 1952? A. Nichai Sophocles.

Q. Were there two of them? A. Just one.

Q. Do you know the pastor or the priest of the Greek Church, of the Greek Orthodox Church in Philadelphia? A. Yes, sir.

Q. What is his name? A. Father Morkides.

What church please. There are three churches.

Q. What name did you say? A. Morkides.

Q. Morkides. Did you know him in 1951? A. Yes.

Q. Did you know him in 1952? A. Yes.

Q. Did you ever see him in company with George Kostatos whom you then knew as John George Sitaras? A. No. I took him over.

Q. You took whom over? A. John Sitaras, you know, George Kostatos now.

And you mean, continue?

Q. Yes. You took him over? A. Well, George Petite, he told me to go up there and take a affidavit.

(Mr. Flynn) I object to that, sir, that George Petite told him to go up there. We can't have this man testify—

(The Court) Who is "him"?

(Mr. Flynn) He is talking about this man and he is testifying and he says that George Petite told him to go some place, so he came to him.

(The Court) He can't do that unless Mr. Petite told him. Strike it out.

Q. (Mr. Pierson) Did Mr. Petite do anything in connection with that? A. No.

Q. You took Kostatos whom you then knew as Sitaras to Philadelphia? A. Yes.

Q. To see Father Morkides? A. Yes.

Q. And on that occasion did you talk to Mr. Petite? A. No, sir.

(Mr. Flynn) I object. Well, he said 'No."

Q. (Mr. Pierson) Do you know what the purpose of the visit to Philadelphia was? A. Well, George, I mean, I call him George now, he after, told me to take him there, you know, to see Father Morkides, to get him a birth certificate.

CROSS EXAMINATION

By Mr. Flynn:

Q. Now, when you say "George" what George are you talking about? A. George Kostatos.

Q. Kostatos? A. Yes.

* * * * * *

(St. Tr. 185-186):

(Mr. Pierson) I would like at this time, Your Honor, to read the testimony of Louis Sitaras, which was previously offered in evidence.

(The Court) The testimony at the hearing in June or July 1953?

(Mr. Pierson) I think it is Exhibit No. 4.

(The Court) Do you have a copy?.

(Mr. Pierson) Yes, we have a copy.

(The Court) Do you have a copy of this, Mr. Flynn?

(Mr. Flynn) Yes, I have a copy.

Before starting, I want to make the same objection I made before to the reading of this testimony, that the witnesses are here in Court to testify. However, I know what Your Honor's ruling will be.

(Mr. Pierson) We will be willing that Mr. Sitaras, otherwise known as Louis Sitaras be excluded from the Court, and I think the Court will grant your objection.

(The Court) Well, that's not the objection.

(Mr. Flynn) No, that's not my objection.

(The Court) This is to the alleged perjured testimony.

(Mr. Pierson) Yes.

(Mr. Flynn) The second one, yes. The first one was read, and I objected to it, Your Honor, and to keep the record straight, we object to this. I object to the reading of this.

(The Court) I will overrule the objection. I understand the point.

(Mr. Flynn) Yes.

(The Court) You object to this testimony which is alleged to be perjurious.

(Mr. Pierson) (To the Jury) Page 24 of Government Exhibit No. 4 in this case, and I read up to this point on George Kostatos' testimony on June 14th, and I won't read it again except to say that this was a hearing before

Mr. Carney, the Hearing Officer when George Petite was counsel for respondent on June 16, 1953.

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(St. Tr. 208-212):

LOUIS SITARAS.

DIRECT EXAMINATION

By Mr. Pierson:

Q. Mr. Sitaras, have you also been known by another name than Louis? A. Yes.

Q. What is that name? A. Eleftherios.

Q. How long have you lived in Baltimore? A. Since October the 4th, 1927.

Q. Do you know the defendant in this case, Mr. George Petite? A. Yes, sir.

Q. How long have you known him? A. Quite some time. He was a friend of my father.

Q. A friend of your father? A. Yes.

Q. Did your father — is your father living now? A. He lived in Baltimore. He is dead now.

Q. Where were you born, Mr. Sitaras? A. In Chios, Greece.

Q. Do you know this witness (indicating), this young man here? A. Yes.

Q. How long have you known him? A. When, now? Or all the time?

Q. All your life? When did you first meet him? A. When we were children in Greece, in Chios.

Q. In Chios? A. In Chios, Greece, yes.

Q. You went to school there; is that correct? A. Yes.

Q. He went to school with you? A. Yes.

Q. What is his name? A. George Modestou Kostatos.

Q. When did you leave Greece? A. Well, it was in 1927, but I don't know what date it was.

Q. How old were you then? A. About eleven, ten or eleven.

Q. About ten or eleven? A. Yes.

Q. Was this young man living in that same town that you were living in when you left Greece? A. Yes, sir, he was living in the same village.

Q. Did you see him again before he came to the United States? Did you see him in Greece? A. Yes. In 1937 I went to Greece and I met him one or two times.

Q. And you got married when you were there; is that correct? A. Yes.

Q. Did you see him again after you got married and came back to the United States? A. Yes. He came to my house again in the fall, in 1951.

Q. Where were you living then? A. 3806 East Pratt Street. You have the wrong address.

Q. Are you still living there? A. Yes.

Q. Was he by himself or with someone? A. Someone brought him there.

Q. Do you know who that was? A. Nick Katsaros.

Q. Did you ever see this young man in the company of this defendant? A. Mr. Petite?

Q. Yes. A. Well, one afternoon Mr. Petite brought George to my store.

Q. When was that? A. Oh, I would say, maybe a month after I met him, he came to my house the first time.

Q. Was that before this date in June when you testified that I just read? A. Yes.

Q. What was the conversation at that time? A. Well, he wanted me to say that he was John Sitaras.

(Mr. Flynn) Who wanted you to say that?

(The Witness) Mr. Petite.

Q. (Mr. Pierson) Did you know who this young man was, that is was Kostatos? A. Yes, sir.

Q. All right, would you continue and tell what happened? A. He told me to come down to the Post Office and tell somebody, some people that his name was John Sitaras.

I said, "You know what you are doing?" I said, "It's not right."

He says, "Yes, don't worry, I'm a lawyer, I know what I'm doing."

So they went away, and I haven't seen him for a couple of months again.

Q. You didn't see either one of them? A. Either one of them.

Q. Did you see either one of them again? A. Yes, sir, they came back together again two or three times and told me the same thing to come down and testify, and I refused.

Q. Did you decide to testify? A. Well, George kept coming back by himself, all crying that his children is starving.

Q. George who? A. That's George Kostatos.

* * * * * *

(St. Tr. 213-217):

Q. You said this that George kept urging you to testify? A. To testify, yes.

Q. And you mean George Kostatos? A. Kostatos, yes.

Q. And you also said you had seen him with George Petite several times? A. Yes.

Q. And was anything said? Was anything said by George Petite on those other occasions with reference to testifying? A. That is what was said.

Q. Is that what was said? A. Yes.

Q. Did you finally testify? A. Yes, I did.

Q. Now, on the day you testified, that was June 16th, according to this transcript, 1952; is that about right? A. Yes.

Q. Did you see Mr. Petite that day? A. Yes, I did.

Q. What did he say to you then? A. He told me what to say.

Q. About what? A. About George Kostatos.

Q. At this conversation with him in the hearing room or outside? A. Outside the hearing room.

(Mr. Flynn) That's objected to as leading.

(The Court) Well, where did you have the conversation?

Q. (Mr. Pierson) Where did you have the conversation with him? A. In the hallway.

Q. In this building? A. Yes.

Q. And you went in to testify? A. Yes.

Q. You said in your testimony that the young man you identified as John George Kostatos had come to Greece from America and come to your school; was that statement correct? A. It's false.

Q. And did anyone tell you or suggest to you that you give that false testimony? A. Yes, sir.

Q. Who? A. Mr. Petite.

Q. You said that this young man was John George Sitaras? A. Yes, sir.

Q. Was that true or false? A. False.

Q. Did anyone suggest to you that you should give testimony that this man was John George Sitaras? A. Yes.

Q. Who was that? A. Mr. Petite.

(Mr. Pierson) I want to see that exhibit.

(Mr. Flynn) This one?

(The Court) This is the original here.

(Mr. Pierson) Yes.

(The Clerk) Here it is.

Q. (Mr. Pierson) Did you know the parents of George Kostatos? Did you know his family? A. Yes, I remember them slightly.

Q. And did he live with his parents? A. When we were children?

Q. Yes. A. Yes, sir.

Q. You said in your testimony that the man you identified as John George Kostatos lived with his grandfather and grandmother; was that statement correct? A. Well, I think you asked me the wrong question. You said John George Kostatos lived with his grandfather and his grandmother.

Q. No, I mean— A. John George Sitaras, you mean.

Q. John George Sitaras. You said that the man you identified as John George Sitaras lived with his grandmother and grandfather; do you recall saying that? A. Yes, I did.

Q. Was that a true statement? A. False.

Q. Did anyone tell you or suggest to you that you should give that answer? A. Yes.

Q. Who was that? A. Mr. Petite.

Q. You are speaking of the defendant in this case? A. The defendant here, yes (indicating).

Q. You identified this man at the hearing, or do you recall identifying this man at the hearing by a birthmark and "Big Ears John"? Do you remember saying that? A. Yes, sir, I did.

Q. Was that testimony true? A. False.

Q. Did anyone tell you or suggest to you that you should give that answer? A. Yes.

Q. Who was that? A. Mr. Petite.

Q. Did anyone in the Immigration Service or connected with the Office of the United States Attorney make any threats against you to induce you to make these statements? A. No, sir.

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(St. Tr. 218-234):

CROSS EXAMINATION

By Mr. Flynn:

Q. Mr. Sitaras, where is your place of business? A. 953 North Gay Street.

Q. Now, my recollection is that you said the first time that you saw this man who was supposed to be Sitaras was when he was brought to your place by a man by the name of Nick Katoris? A. Katsaros — K-a-t-s-a-r-o-s.

Q. Now, do you know where Mr. Katsaros met this man? A. No, sir, I don't.

Q. Do you know how long he had known him? A. No, sir.

Q. And he brought him to your place for what purpose? A. To see me.

Q. To see you about what? A. Just to see me.

Q. Just to see you? A. Yes.

Q. Did he introduce him to you? A. Yes.

Q. Did he tell you who he was? A. He did.

Q. Did he tell you who he was? A. He did.

Q. Did he tell you what his name was? A. Yes.

Q. What did he say his name was? A. George Kostatos.

Q. Kostatos. He didn't say Sitaras? A. No, sir.

Q. Did he say where he had met him? A. He said that he was working on the ship.

Q. That he was working on a ship? A. Yes.

Q. Was this man working on a ship with him? A. No, sir.

Q. He told you that this man was working on a ship? A. On a ship.

Q. At that time he was working on a ship, and that, I think you said, was in the spring? A. In the fall.

Q. In the fall? A. Yes.

Q. And what year? A. 1951.

Q. 1951? A. Yes.

Q. Can you tell us about what month it was? A. No, sir, I don't remember.

Q. Then, as I understand it, the only purpose of his bringing him to you was to tell you that he was a sailor and he was working on a ship? A. That's right.

Q. And when was the next time that you saw this man? A. When Mr. Petite brought him to my place at 953 North Gay Street.

Q. Now, when was that? A. Oh, this was in the winter.

Q. In the winter? A. Yes, it was cold.

Q. You say this was in the year 1951 or 1952? A. I think it was the end of '51 or '52.

Q. The end of '51 or the end of '52? A. No, the beginning of '52.

Q. And did you see this man at any time between the time that Petite brought him there and the time this man. Nick brought him? A. No, sir.

Q. You didn't see him at all? A. No, sir.

Q. And that was a period of how long would you say? How many months? A. About a month or two months.

Q. You knew who this man was all the time, didn't you? You went to school with him in Greece and when this man brought him in and said he was on a ship, and didn't you make any arrangements at all to entertain him or be nice to him when you hadn't seem him for a while? A. Well, we had dinner together. It was Sunday afternoon. We had dinner together.

Q. Where was this? Do you live where your store is? A. No, sir.

Q. And did you have dinner at the— A. At my house, 3806 East Pratt Street.

Q. East Pratt Street? A. Yes.

Q. And the two of them, yourself, and I assume your family? A. Yes.

Q. Had dinner together because he was a man you knew in the Old Country? A. From the same village, yes.

Q. Now, the next time you say was several months afterward when Mr. Petite brought him there. Will you describe exactly what happened at that time? What did he say to you? What did Mr. Petite say to you? A. Well, he came in, and he said, Mr. Petite said that he wanted to change his name to John George Sitaras.

Q. And where did this happen? In your store? A. North Gay.

Q. And what day was that? Do you remember? A. I don't remember.

Q. Do you know what time of day it was? A. In the afternoon.

Q. In the afternoon, and Mr. Petite just said he wanted to change his name to George Sitaras. Did he tell you why? A. So he could stay here and work, make a living for his wife and children.

Q. Now, what did this man say to you? Did he make any statement to you at all? A. Well, he pleaded with me to do it.

Q. Pleaded with you to do it? A. Yes.

Q. And at that time you said you would not do it? A. No, sir, I didn't.

Q. When was the next time you saw this man? A. Oh, sometime later; I don't know exactly.

Q. What? A. Sometime later, maybe a few weeks, three or four weeks.

Q. Three or four weeks later you saw him. Was he by himself? A. No, Mr. Petite brought him again.

Q. Now, at that time what was the conversation? Can you tell us what day of the week it was? A. No, I can't tell you.

Q. Was it in the morning or afternoon? A. In the afternoon.

Q. Afternoon? A. Yes.

Q. Now, the conversation at that time, what was it about? The same? A. The same, the same thing.

Q. Did this man ask you to do something for him? A. No. Mr. Petite told me to do it, and he pleaded the same way.

Q. Now, then, did you have any other visit from Mr. Petite? A. No, sir.

Q. That's the last time you saw Mr. Petite? A. From then? I saw him in Philadelphia in the Court House.

Q. Well, before you saw him in Philadelphia, did you see him anytime between the time he was at your house,

your store, with this man that you just mentioned, when was the next time you saw him? A. I saw Mr. Petite at his office.

Q. At his office? A. Yes.

Q. When was that? A. Well, that was in the spring.

Q. The spring of what year? A. 1952.

Q. Why did you go to his office? A. Because he sent George over to take me from the store to go down and told me what to say in the hearing.

Q. Told you what to say at the hearing? A. Yes.

Q. Why did you go to the hearing? What was your real purpose in going to this hearing? A. To tell those lies.

Q. To tell the lies? A. Yes.

Q. For whom were you going to tell the lies for? A. For John, for George Kostatos.

Q. Now, how did you get to the Post Office for these hearings? Whom did you come with? A. Mr. George brought me and George Kostatos over here with me.

Q. From his office? A. From his office, yes.

Q. Now, you have testified before to this matter, haven't you? You have given testimony about this before? A. Yes.

Q. Now, isn't it a fact that in that testimony you said, made this statement, that they were asking me about Georgios to say that he was John Sitaras, so I told him it is not right, and he said, "Don't worry, I know what I'm doing, I'm a lawyer."? A. That's right.

Q. Now, then, you also testified, "I did not see Petite again." A. Well, just a minute. Again, when is that?

Q. Is that your testimony? A. I just told you I didn't see Petite again. I saw Mr. Petite in his office.

Q. You didn't testify to that before. How do you come to testify to that now?

(The Court) When is he supposed to have said this, Mr. Flynn? That you are reading from?

(Mr. Flynn) In Philadelphia.

(The Court) I know, but when is he suppoeed to have said that? To Mr. Petite at the store or at his office? I am not clear.

(Mr. Flynn) At the store.

(The Court) At the store?

(Mr. Flynn) Yes, sir.

(The Court) I hadn't heard that.

(Mr. Flynn) In other words, the testimony was that he only saw him twice, both times at the store, and the last time he said "I never saw him again."

(The Court) But you didn't read all of that?

(Mr. Flynn) No. These are excerpts. If you want me to read the whole thing I will be glad to do it.

Q. (Mr. Flynn) Now, then, did you see Mr. Petite? A. Yes, I did.

Q. Then why did you testify that you had not seen him? A. Testify to when?

Q. In Philadelphia. A. That I had not seen him?

Q. That you had not seen him after that time.

(The Court) Mr. Flynn, I think you ought to read him the whole thing.

(Mr. Flynn) I will be glad to do that.

(The Court) To make it clear. I think you better let him see it, because from what you have just read to him he can't tell whether it is at the store or at the house or where or at the office.

(Mr. Flynn) Does Your Honor want me to read it all?

(The Court) No, just so that we can tie it in.

(Mr. Flynn) Well, this part.

(The Court) As to what was previously said, that he testified to in Philadelphia, not just little bits.

Q. (Mr. Flynn) Now, the question that was asked you:

"Now, would you relate to His Honor what conversation you had with Mr. Petite and Mr. Kostatos in the spring of 1952 when both of them came to your lunch room in Baltimore, Maryland?"

And your answer was "Well, Mr. Petite brought this man to my store and told me if I would go up and say he was John Sitaras so he could stay here and work and support his family."

You said that, didn't you? A. Yes, that's correct.

"Question: What did you say?"

Your answer was, "No, I said it is not right, it doesn't sound right, I told him." That was your answer? A. Yes.

"Question: Why did you say that?

"Answer: Because I knew that it was George Kostatos.

"Question: How did you know that, George, as you put it, he was George Kostatos?

"Answer: Well, he was introduced to me.

"Question: By whom?

"Answer: By some man named Nick Katsaros.

"Question: When?

"Answer: Oh, sometime before that.

"Question: Approximately how long before that?

"Answer: Well, two or three months, I imagine.

"Question: It was either at a very early part of 1952 or the latter part of 1951?

"Answer: Sometime last part of 1951 it was."

That's your answer. A. Yes.

Q. "And that was George Katsaros. What was the name? Who was the man that introduced you to him?

"Answer: Nick Katsaros.

"Question: Is he in the courtroom?

"Answer: No, sir.

"Question: Well, what other conversation then occurred, if any, between you and Mr. Petite on this occasion in the spring of 1952 when he visited your lunch room?

"Answer: Well, there was the only thing he wanted me to do so I gave him a bottle of orange and they drank it and they left.

"Question: That was the end of the conversation?

"Answer: Right there."

And then you started to say, "Well, I asked him.

"Question: On that occasion?" And your answer said, "On that occasion."

"Question: Did you see Mr. Petite again?

"Answer: Yes, sir.

"Question: When?

"Answer: Oh, a few day later.

"Question: Was he with anyone at that time?

"Answer: With the same man.

"Question: Mr. Kostatos?

"Answer: Kostatos, yes, sir.

"Question: All right. Where did that meeting take place?

"Answer: In the same lunch room.

"Question: Your lunch room in Baltimore?

"Answer: Yes, sir.

"Question: What conversation, if any, took place at that time?

"Question: Well, would you relate it to the court?

"Answer: That they were asking me about Georgiou and says that he was John Sitaras. So I told him, It is not right again and he says, "Don't worry, he says, "I know what I am doing, I am a lawyer."

"Question: And what did you say?

"Answer: So they left again.

"Question; Did you see Mr. Petite again?

"Answer: No, sir."

Now, that's your answer.

"Question: Did you see Mr. Kostatos again?

"Answer: Yes, sir.

"Question: When?"

(Mr. Flynn) Do you want me to continue with it any further?

(The Court) Well, that ties it in. Now, your question was:

Q. (Mr. Flynn) Well, my question is, you didn't see Mr. Petite again? You are contradicting that by saying that you went to his office today? A. I went to his office, me and Mr. Petite and George, and the lawyer they bring us to the same floor and all of us come over here in the Post Office Building, and even at his own office I told him, I said, "It's the wrong thing you are doing."

(The Court) Did he deny that he had seen Mr. Petite on the day of the hearing?

(Mr. Flynn) No, sir, he did not. He said he was outside the courtroom and was called in, and that's the only one he covered, and there is no testimony whether he did see

him or didn't see him, but he certainly was there at the hearing.

(The Witness) Somebody had to take me to that room.

Q. (Mr. Flynn) Isn't it a fact that you and Kostatos came up to this building here on the third floor and Mr. Petite came over afterward? A. No, sir.

Q. And met you here? A. No, sir. I went to his office, and he told George to take me to his office, and he said. He came to the store and took me to his office.

Q. Now, when you get to the courtroom down here, or where the hearing was being held, where did you go? A. We sat outside on a bench with Mr. Petite.

Q. Where was Mr. Kostatos at that time? A. He was in the room.

Q. He was in the room? A. In the room.

Q. When did you go in the room? A. It wasn't my turn to go in.

Q. Didn't you testify in Philadelphia that what you had stated before the Immigration authorities in Baltimore that you had been told to state that by Mr. Petite outside the hearing room, that he came out and told you what to say? A. Well, when he came out from the hearing room, now — what do I say? To you or to the jury?

Q. To the jury. A. When he came out the hearing room, he told me to make sure, to say that he had long ears, big ears, and that he had the birthmark on his hand and that his uncle brought him to Greece.

Everything I said the first time was about George Kostatos. The only thing was different, the lie was, that instead of being George Kostatos that I was talking about that he was John George Sitaras, and the other lie was that he came from United States.

He told me to make sure to remember those things.

Q. Now, didn't you also testify that you made these false statements so that the boy, George Kostatos could stay here and work and support his family? A. Yes.

Q. Now, isn't it true that George Kostatos came to see you many times without Mr. Petite, when Mr. Petite was not there? A. After the hearing?

Q. No, before the hearing, many times. A. No, not many times.

Q. How many would you say he was there by himself? A. I don't know, but he came.

Q. Didn't you testify that he was there with you many times and that he was crying— A. Yes.

Q. —about his family? A. Yes.

Q. And the only reason you went down there was because he was crying for his family and because you felt sorry for his family? A. Yes, I felt sorry for his children.

Q. Now, let me read this to you: The question was asked you:

"Is it fair to say, Mr. Sitaras, that he, meaning this boy, that he begged you, pleaded with you to go as his witness?"

Your answer was "Yes, he begged all right."

Is that true?

"Well, it was as a result of Mr. Kostatos pleading to you that you went and gave this testimony?" And your answer was, "Yes, sir."

And the next question was: "Rather than Mr. Petite, wasn't it? You didn't go because Mr. Petite asked you, you refused to go when Mr. Petite asked you? Isn't that right?

"Answer: That is right."

(The Witness) Yes.

Q. (Mr. Flynn) And you still say you refused to go when Mr. Petite asked you but you went because this boy had

pleaded with you about his family and that's the only reason you went and gave this testimony?

(The Reporter) I didn't hear any answer.

(Mr. Flynn) He shook his head.

(The Witness) Yes.

* * * * * *

(St. Tr. 234-239):

HERBERT T. SMITH

DIRECT EXAMINATION

By Mr. Pierson:

Q. Mr. Smith, you are attached to the Immigration and Naturalization Service? A. Yes.

Q. In Baltimore? A. Yes.

Q. With your office, where is your office? A. Post Office Building.

Q. I show you this paper and ask you if you can identify it. A. As to my signature?

Q. As to what it is. A. This is—

Q. Speak up. A. This is the inbound crew manifest.

Q. Of what ship? A. Of the Costa Rican SANTA IRENE.

Q. And does the name George Kostatos appear on that manifest? A. George Kostatos?

Q. Yes. A. It does, line 4, second page.

Q. What does it show his nationality to be? A. Greek, Greece.

Q. The date of arrival of the ship? A. Baltimore, Maryland, 10-12-51.

(Mr. Pierson) Your Honor, I should like to offer a certified copy of the manifest in evidence.

(The Court) Any objection, Mr. Flynn?

(Mr. Flynn) No, sir.

(The Court) All right. Put it in.

(The Clerk) Government Exhibit No. 5.

(Ship's manifest, SANTA IRENE, was marked Government's Exhibit No. 5.)

CROSS EXAMINATION

By Mr. Flynn:

Q. Mr. Smith, can you tell us please what time, when was the time that the ship left Baltimore? A. No, sir.

Q. Don't you have any record of that? A. I don't.

Q. Do you know where she tied up in Baltimore? A. No, sir.

Q. Doesn't the manifest show what time the ship arrived and where it tied up? A. No, sir. The manifest only shows the date of arrival. There might be a boarding report which would show the place of inspection and the time of inspection. That's a separate paper.

Q. Doesn't this manifest show that this ship was — that the agent was Cottman Company? A. It does.

Q. Doesn't it show where it tied up? A. No, sir.

Q. What pier? A. No, sir. That would be put on a separate paper.

Q. Does it show whether or not the entire crew was aboard when the ship left? A. No, this is an inbound manifest, and it doesn't show that. This report is supposed to show who was on the ship going out, the old I-489.

Q. But you don't have that?

(The Court) Yes.

(The Witness) This here.

Q. (Mr. Flynn) Well, does it show on there? Can you tell us what is on there? A. It shows George Kostatos did not depart with the ship.

Q. Does that also tell you when the ship left? A. It should. This report was made October 15, 1951, expected to sail 12 Noon, October 13, 1951.

Q. 12 Noon October the 13th? A. Yes.

Q. It arrived on the 12th and left on the 13th, 12 Noon. That was the expected time. A. That's right.

Q. Does that mean leaving the dock, or what? A. Well, when this report was rendered she was laying at the Curtis Bay Coal Pier, expected to sail 12 Noon 10-13. Sometimes they leave direct from the pier and sometimes they go off to the anchorage before they depart.

(The Court) Well, doesn't the statement of the Master of the vessel state that this was on the date of October 15th at the Port of Baltimore. Does that mean it stayed there three days?

(The Witness) Sometimes these are not rendered at the time the ship sailed. The Captain mails it in sometimes 150 miles down the Bay by the pilot. This may not have been signed by the Captain.

This was rendered by the agent Cottman Company.

(The Court) Well, Mr. Flynn wants to know exactly when the ship sailed and from where. There are some records here in Baltimore which show that, I suppose. Perhaps it's not the Immigration record.

(Mr. Pierson) No, sir, it is in the Custom's record.

(The Court) It's in the Custom's record. Do you want the Custom's record, Mr. Flynn? If you want them, I suppose we can get them, take steps to get them.

(Mr. Pierson) I can get them.

(Mr. Flynn) Well, maybe we may have some difficulty getting records for 1951, sir, but I do know that they hold

them down there if we want them, but this shows that it sailed at 12 Noon from the anchorage, that it left the dock and sailed sometime prior to Noon on the 13th.

(Mr. Pierson) We will stipulate that.

(The Court) Mr. Pierson says he will stipulate that.

(Mr. Pierson) The ship left on October 13th from anchorage and must have left the dock sometime prior to noon on October 13, 1951.

* * * * * *

(St. Tr. 240-250):

(Mr. Flynn) At this time, sir, we would like to make a motion for a directed verdict.

(The Court) Do you want to argue it?

(Mr. Flynn) Well, I will state it.

As far as I can see in this case, Your Honor, there is no corroboration of any of the perjury in this case either by another witness or by any circumstance, and unless the perjury is proven by at least two witnesses or by corroboration of some other kind, then there cannot be any conviction for subornation, and in this case there is absolutely no corroboration of the individuals and what they testified to.

(The Court) Do you want to say anything, Mr. Pierson?

(Mr. Pierson) It seems to me that there is ample corroboration in that this was an obvious scheme to pass this man off as a man of another identity.

The mere fact that there are two people who committed perjury in connection with the same proceeding lends color to that. Moreover, I don't want to go over the whole case, but the effort to obtain corroboration of Mike Sitaras shows two things, first, that when the hearing took place the defendant in this case knew which were the true circumstances, and which was the right identity.

It seems to me that the transcripts themselves disclose that Mr. Petite was present at the hearing and sat by and permitted these people to do what they did with respect to committing perjury, and then you have their own statements that he induced them to commit perjury and told them, and the perjury was corroborated.

(The Court) Well, he asked questions. It was more than sitting by.

(Mr. Pierson) Yes.

(The Court) And Mr. Flynn, I think, in addition to Mike Sitaras, there is corroboration of the fact that Kostatos was a Greek citizen, as the manifest which has just been offered shows.

I think there is sufficient corroboration.

(Mr. Flynn) It does not corroborate the perjury. You have two perjury cases here. The only evidence we got is the man, the one went in and said, "I committed perjury," and the other fellow was sitting outside, and he goes in and he commits perjury. Where is the corroboration?

(The Court) The corroboration, Mr. Flynn, is the record, the official transcript of the record which has been offered shows what they did say; and in addition the testimony of the two men themselves, Kostatos and Sitaras, there is the corroboration of what they said was false from the testimony of Mike Sitaras, from the record, from the transcript of the hearings, which is some corroboration of the fact that an essential part of the testimony was false, namely that he was not an American who had gone to Greece, not an American citizen who had gone to Greece, but that he was in fact a Greek citizen, that he was in fact Kostatos and not Sitaras, not John George Sitaras, and the fact that it was Petite's scheme from the testimony of Mike Sitaras.

Of course, when I say these things, I am saying that there is evidence of them. I am not undertaking to take the function of the jury, which is what the jury is to find; but on

a motion for a directed verdict the evidence must be taken most favorably to the Government.

(Mr. Flynn) Well, do I understand Your Honor — I probably misunderstood it, I am sorry — but is Your Honor saying that these people could corroborate themselves by saying "I committed perjury because I was somebody else."

(The Court) No, I am not saying that.

(Mr. Flynn) Then I probably misunderstood you.

(The Court) Because Mike Sitaras could corroborate it. Mike Sitaras who did not commit perjury, who testified that Petite came to him and tried to persuade him to give his nephew's name to Kostatos, and that he came to him in that winter, and that Petite was the one who suggested it and asked him to give his name to this Kostatos, that Petite asked Mike Sitaras to give his nephew's name to Kostatos; and he said he refused to do it.

Now, that's corroboration.

(Mr. Flynn) Of what?

(The Court) It's corroboration of the fact that Petite knew that the testimony was false; he knew that Kostatos was Kostatos and not Sitaras, John George Sitaras, and corroboration of the fact that he was trying to induce people to say something that was not true.

(Mr. Flynn) I see that I have not made myself clear to Your Honor. It is not corroboration of the subornation; it is corroboration of the actual perjury that you have to have.

(The Court) Well, all right, but corroboration of the perjury, that the proof of what they testified to that is in dispute. Now, the proof of the fact is corroborated by the manifest, by the sailor's manifest which shows that George Kostatos who came over on the ship is this boy and that this boy did not sail with the ship and was a Greek seaman and not an American as he claimed in his testimony.

So that is corroboration of the perjury of Kostatos.

(Mr. Flynn) I'm sorry, Your Honor.

(The Court) It's corroboration of the perjury of Louis Sitaras who testified that the boy had come, had been brought by his uncle from America to Greece, and his Greek citizenship shown by the manifest is corroboration of that.

(Mr. Flynn) It's not corroboration; it merely shows that he arrived on a ship.

(The Court) No, it shows he was a Greek citizen.

(Mr. Flynn) Of Greek citizenship.

(The Court) It's some corroboration that he wasn't born in America, in the United States. If he had been born in America and had the right to come ashore and wanted to stay in America, he would certainly have said that he was an American citizen and would not have made a false statement that he was a Greek citizen.

(Mr. Flynn) I still can't see where that corroborates the actual perjury, and I think the cases so hold it, has to be corroboration of the perjury itself.

(The Court) Well, isn't Mike Sitaras corroboration of the perjury?

(Mr. Flynn) He doesn't even know that there was perjury committed. He doesn't even know that they testified to any perjury.

(The Court) Well, if you want corroboration of the fact that they testified, the transcript of the record is corroboration of what the men said. You don't need any corroboration of the record as to what they testified to. The proof that it is false is corroborated of the testimony of the two admitted perjurers that what they said was false, is corroborated by Mike Sitaras and by the manifest.

There are the two items that I think of at the moment.

(Mr. Pierson) Each corroborated the other.

(The Court) And each corroborated the falsity of the other; but I was going beyond that.

(Mr. Flynn) Well, I won't belabor it any longer, just so we get our point in the record.

Now, I want to go on to our next motion.

(The Court) Well, I will overrule that motion.

(Mr. Flynn) And my next motion is one that Your Honor has already decided some time ago and that is as to double jeopardy, and I merely want to renew that motion at this time, and I know what your answer is.

(The Court) Well, I refuse that. I reread that opinion a day or two ago, and I still think I am right unless the Fourth Circuit tells me that I am wrong.

(Mr. Flynn) All right, sir.

JOHN MITSOS

DIRECT EXAMINATION

By Mr. Flynn:

Q. Mr. Mitsos, what is your address, please? A. 2800 Edgecomb Circle, South.

Q. I don't understand that at all. A. 2800 Edgecomb Circle, South.

Q. Now, what business are you in, Mr. Mitsos? A. Ship chandler.

Q. You are a ship chandler? A. Yes.

Q. Do you remember boarding a ship in October 1951 which was tied up to the Consolidated Coal Pier, the SANTA IRENE? A. Yes, sir.

Q. For what purpose did you go on board that ship? A. To supply the ship.

A. To supply the ship. A. Yes, sir.

Q. And do you remember that on that occasion that a sailor came to you or one of the seamen came to you and asked you whether or not you knew George Petite? A. Yes, sir.

Q. Could you identify that seaman if you saw him again? A. If he was in the courtroom now?

Q. Yes. This has been almost seven years ago. A. No, sir, I saw him only that time and I never saw him again.

Q. Would you tell us please what time you boarded this ship, the SANTA IRENE? A. What time the ship arrived in the morning, I don't remember exactly the time. It arrived at the coal pier sometime in the morning, or midnight, something like that, and I went on board the ship to get the orders from the Captain and also from the steward department.

A seaman came to me.

Q. Can you tell us approximately what time you boarded the ship? A. I cannot recall that.

Q. Was it in the morning or afternoon? A. I cannot remember. It is too long ago. I can't remember.

Q. All right. A. And the seaman asked me if I know Mr. George Petite.

I said, "Yes, I know him. He's a lawyer here in Baltimore."

He said, "Will you tell him I'm here and tell him I'm on the ship, and I'm his cousin." He said he was Mr. Petite's cousin.

I think that the next day, sometime the next day—

Q. Before you get to that, will you tell us please what time you left that ship, approximately? A. Oh, it was late, I think, midnight.

(The Court) Do you mean, did he stay the whole time?

(Mr. Flynn) Yes, the whole time, and what time he left.

(The Witness) I went back and forth to get the merchandise according as the ship has it.

(The Court) You went back and forth?

(The Witness) Back and forth, yes.

Q. (Mr. Flynn) And what time did you finally leave the ship? A. Oh, around about between seven o'clock and nine, something like that.

Q. Now, then, did you get in touch with Mr. Petite? A. Not that night, no.

Q. Not that night? A. No, sir.

Q. When did you get in touch with him? A. The next day.

Q. The next day? A. I called Mr. Petite.

Q. That would be the day after the ship got here? A. Yes.

Q. Which was the 13th of October? A. Yes, I don't remember the day. It was the next day.

Q. You called Mr. Petite the next day? A. Yes.

Q. The next morning, was it? A. Yes.

Q. The next morning? A. Yes.

Q. And you did tell him what the seaman had told you to tell him? A. Yes, sir, I said, "Somebody is looking for you on the SS SANTA IRENE."

Q. But you are positive that it wasn't until the next day, the next morning, that you called him? A. That's right.

Q. Do you have any idea or do you have any information as when the SANTA IRENE sailed from Baltimore? A. No, I don't remember, sir.

Q. You don't remember? A. No.

(Mr. Flynn) Witness with you.

CROSS EXAMINATION

By Mr. Pierson:

Q. You don't know whether Mr. Petite ever saw the man or not, do you? A. No.

* * * * * *

(St. Tr. 318-366):

ANESTES KAMPOS

DIRECT EXAMINATION

By Mr. Flynn:

Q. Mr. Kampos, you are a Greek interpreter, are you not? A. I was until 1953.

Q. Until '53. In 1951 you were an interpreter? A. Yes, sir.

Q. For the Immigration and Naturalization Service? A. Yes, sir.

Q. Did you on the occasion of October 23, 1953 act as an interpreter in an investigation that was had by the Immigration authorities? A. Yes, sir.

Q. 1951. It was October the 23d, 1951? A. Yes.

(Mr. Flynn) May I have the original of that hearing?

Yes, I have a copy here, but I want to show him the original, Mr. Pierson.

Q. (Mr. Flynn) I show you this paper which indicates that — it was in reference to John George Sitaras, 3814 Northern Parkway, and that you were the interpreter. Are you familiar with that? A. Yes, sir.

Q. Now, then, after you had finished this hearing, did this man Sitaras make any request of you? A. Yes.

Q. What did he ask you to do? A. If I know any Greek lawyer.

Q. What? A. If I know any Greek lawyer.

Q. If you knew any Greek lawyer? A. Yes, sir.

Q. Did he mention any Greek lawyer to you? A. He mentioned that time, he mentioned in the testimony here, in the testimony the time I was interpreting to Mr. Carney, "I think I know", he said, "one lawyer I heard live in Baltimore."

Q. I think I know one lawyer whom I think lives in Baltimore? A. Yes.

Q. Well, now, did he ask you to do anything for him at all? He asked you if you knew any Greek lawyer. Would you tell His Honor and the ladies and gentlemen of the jury exactly what he said to you in that regard? A. After we finished the hearing the time I was ready to going out, he asked me do I know any Greek lawyer, can I tell him if he like to come in and take my case.

And I left the hearing room. I remember exactly what time, after five o'clock sometime, I don't remember.

I passed — after that I went across the street from the Post Office Building.

Q. That hearing was in this building here? A. Yes, sir.

Q. And you went where? A. Mr. Petite's office is on Lexington Street across from this building.

Q. Right across the street? A. Yes.

Q. And after the hearing, you said about five o'clock, you did what? A. I walked over there, and I didn't find — Mr. Petite's office, it was closed.

Next morning before I come in my business place I passed by from here up Mr. Petite's office, and I tell them Mr. Petite, last night, yesterday afternoon I was in the hearing room having a fellow jumped from the ship, Greek fellow, and he asked me, "Do you know any Greek lawyer?"

And I tell him I know him. Now, "If you want to take the case, go ahead, see that man." That's all I tell him, and I left his office.

Q. That was the day after? A. On the 24th, on the 24th October 1951.

Q. And that's the only conversation you had with him? A. That's the only conversation.

Q. With Mr. Petite? A. Yes.

Q. Did he make any statement to you about this man? A. Nothing else.

Q. Didn't say he knew him or anything? A. No, I left his office after that.

CROSS EXAMINATION

By Mr. Pierson:

Q. Mr. Kampos, you said you were an interpreter for the Immigration Service. That wasn't your regular job? You just come in there occasionally and interpret; is that right? They would call you to come in and interpret? A. Yes, sir. Any time he wants me, call me in my office.

Q. You were not an employee of the Immigration Service? A. Yeah, I was getting money.

Q. You weren't a regular employee? A. Not regular, no.

Q. Part-time? A. Part-time.

Q. What is your business? A. Restaurant business.

Q. And Mr. Petite was your attorney too, wasn't he? A. No, sir.

Q. Hadn't he been your attorney? A. Not at that time.

Q. He has been your attorney since? A. No, sir.

Q. Well, now— A. He was my attorney time I was absent for Greece because I was taking the trip to Greece, and that time he was my attorney.

Q. When was that? A. Last year, '57.

Q. You left your property in his charge? A. Yes.

Q. Now, I believe you said that at the time this matter of knowing any Greek lawyer came up, this man told Mr. Carney— A. Yes.

Q. —that he did know one Greek lawyer? A. Yes.

Q. Well, what did Mr. Carney say? A. How did he know it? He told him, he said he visited Greece in 1947 or 1946, something like that, that time he did see him in Chios Island, in answer, that he told Mr Carney that.

Q. He didn't say anything about having given a card or shown a card to Mr. Mitsos, did he? A. No.

Q. He didn't say anything about meeting Mr. Petite? A. No, not mention Mr. Mitsos.

Q. So you don't know whether he met him or not? A. No, I don't know.

Q. And you interpreted through that hearing? A. Yes.

Q. And your memory of it is pretty good? A. Yes, sir.

Q. Now, did Mr. Carney swear these witnesses? A. Yes.

Q. Do you remember that? A. Yes. I interpreted for them.

Q. You know Mr. Carney well? A. Yes.

Q. And you appeared before the Immigration Department a number of times? A. Yes.

Q. There is no question in your mind as to what Mr. Carney looked like? A. I know him very well.

Q. You know him very well? A. Yes.

Q. And he conducted the hearing? A. Yes, sir.

GEORGE B. PETITE

DIRECT EXAMINATION

By Mr. Flynn:

Q. What is your full name? A. George B. Petite.

Q. Speak up so that all these ladies and gentlemen can hear you. A. Yes, sir.

Q. Mr. Petite, where were you born? A. I was born in the Island of Chios, Greece.

Q. How old were you when you came to this country? A. Between eleven and twelve.

Q. Did you come over alone or did your parents come over with you? A. I came here by myself.

Q. Eleven or twelve years old, and you came by yourself? A. Yes.

Q. Now, when you arrived in this country, where did you go to live? A. First, I lived in New York City.

Q. Did you have any work, or did you go to school in New York? A. Yes, sir. I worked at night and went to school during the day.

Q. What kind of work did you do? A. First I started out as a bus boy and then became a waiter.

Q. A bus boy? A. Yes.

Q. I thought you said "boss boy". You mean bus boy? A. Yes.

Q. And you went to school during the daytime and worked at night? A. Yes.

Q. Now, then, how long did you stay in New York? You were working in a hotel, were you? A. Hotel, restaurant, yes, sir, up to about 1917. Then I went to Chester, Pennsylvania.

Q. Chester, Pennsylvania? A. Yes.

Q. And what did you do? Work there? A. No, I opened a fruit stand, grocery store.

Q. How old were you then? A. About fifteen or sixteen.

Q. Did you have anybody in partnership with you? A. Yes, I had.

Q. Who was it? A. I had a gentleman by the name of Nick Vournous. He's dead now.

Q. I think one of the witnesses here yesterday testified, said something to the effect that he was in business with you in Chester, is that right? A. No, you are right as to the testimony, that we were partners together, but his brother-in-law was with me and he came in shortly and then dropped out.

Q. So that you were in some sort of a business arrangement with him up in Chester, Pennsylvania? A. That is right.

Q. Now, while you were in this business in Chester, did you continue to go to school? A. At night, yes, sir.

Q. Where did you go to school? A. Well, I went to Chester at night, the high school and then I commuted from Chester to Philadelphia, Temple University.

Q. Temple University. What was that? A. It was a prelaw.

Q. Prelaw? A. Course, yes.

Q. You went there at night? A. Yes.

Q. How long did you stay in Chester? A. Until about 1922.

Q. And where did you go from there? A. I went back to New York City.

Q. To New York? A. Yes, and took the State Board and I was admitted to the Brooklyn Law School in 1922.

Q. 1922, and you studied law in the Brooklyn Law School? A. Yes.

Q. When did you graduate? A. 1926.

Q. And then did you come to Baltimore then? A. Yes, I did.

Q. When were you admitted to the Maryland Bar? A. 1929.

Q. 1929. And you have been practicing law ever since in Baltimore City? A. That is true, sir.

Q. Now, you are married. When were you married? A. I was married in 1931.

Q. What size family do you have? A. I have three boys, one twenty-five, one twenty-four and the other is almost nineteen.

Q. These boys are all out of school? A. No, the oldest passed the Bar just last week, and the second one, he teaches in Boston schools, and he attends the University of Boston at night for his Master's Degree; and Andrew is at the Harvard University or College.

Q. The younger one, nineteen, where does he go to school? A. To Harvard College.

Q. He goes to Harvard? A. Yes.

Q. All right. Now, you have heard the testimony here these last two or three day with reference to your case, and will you tell His Honor and the ladies and gentlemen of the jury when you first met this John Sitaras? A. Yes.

Mr. Kampos left a word with my secretary in the office. Usually I have hay fever in the late part of September until early part of November, and I had left my office early that afternoon to go home; but my secretary had a notation for me the next day that Mr. Kampos had passed from the office and left a word that a Greek was apprehended by the authorities and that he asked for a Greek lawyer.

Under the Rules of Procedure, I filed my name with the Immigration authorities and requested that my name be given as the attorney for the alien or foreigner, and the inspector there, Mosley, M-o-s-l-e-y, said to me, "Now, Mr. Petite, we cannot permit you to intervene for this man until we have sufficient time to investigate it; but I will enter your name as the attorney for the alien, and when the investigation is fully completed by the Immigration, we will notify you to go and interview him.

(Mr. Flynn) Just a minute. Does the Government have the entrance of his appearance at that time?

Q. (Mr. Flynn) Well, while you are looking for that I'll ask him this:

Now, after you entered your appearance for this man with the Immigration and Naturalization, you say you were told that you could not see him? A. Yes.

Q. Did they tell you where he was? A. He told me he was in custody, and I knew that until you get a permission, until you get a written authorization from the Immigration Inspector, you cannot interview any alien who is in Baltimore City Jail or in any of our prisons.

Q. Did he tell you that he was in the Baltimore City Jail? A. He did.

Q. Where did you see this man first, the very first time you saw him after that date? A. Early in the morning on October 30th, 1951 in the Baltimore City Jail.

Q. Now, I want to show you this.

Now, did you get from the Immigration and Naturalization Service authority to see this man in the jail? A. Yes, sir, I did.

Q. I show you this photostat and ask you whether or not that is — the Government has looked at it — is a photostat of the authority that you received? A. That's right.

(Mr. Flynn) If Your Honor please, I would like to offer this in evidence.

(The Clerk) Defendant's Exhibit 3.

(Authorization was marked Defendant's Exhibit No. 3.)

(Mr. Flynn) (reading) "United States Department of Justice. Immigration and Naturalization Service. October 30, 1951. The Warden, Baltimore City Jail. Good for Tuesdays and Fridays only between the hours of 1:00 and 3:00 P. M.

Dear Sir:

"Kindly pefmit the bearer George B. Petite to visit John George Setaras, aka Georgios Kostatos who is being held in custody for this Service during visiting hours. This pass is good for one visit only.

"Very truly yours, John L. Murff, District Director, Baltimore District, by Herbert F. Moseley, Title, Acting Chief, Investigations & Deportation Section."

Q. (Mr. Flynn) When you saw this man in the Baltimore City Jail on October 30th, did you take a complete statement from him as to who he was and how he got into the country? A. Yes.

Q. Now, will you please tell His Honor and the members of the jury in your own way just what this man told you about himself? A. As I arrived in the Baltimore City Jail, I was accorded to ask for him, and they sent for him and he was brought out.

He spoke to me in Greek, and I answered, and I asked him questions, and I said to him, "Who you are?" And he gave me the facts that he was a young man, that he was born in Chester, Pennsylvania, and at that time as a young man, I was able to speak better English than most of my countrymen, and I do recall distinctly one night in 1919 I was asked by my lady that I live with her to go out and get either a midwife or a doctor"—

Q. Just a minute. A. I'm sorry.

Q. Did this man tell you this? I am asking what he told you and you explain your reasons for believing his story? A. He told me that his name was John George Sitaras. "Sitaras" in Greek means "weak", and many families among the Greeks were known as Sitaras.

He outlined to me the story that he was born in Chester, Pennsylvania, and that he had gone to Greece while he was young and that he had heard my name when his mother gave a birth that I was out at night to obtain a doctor or a midwife, which was a fact, that I had acted for a Greek lady who had given a birth under the circumstances.

The thing registered to me right away. So I said to him, "Well, I'm going back again."

After I took all these facts down I went to the office and I went to Immigration to ascertain what the bond would be required to release him. I did release him right away.

The Immigration authorities demanded $5,000. I told him it was impossible for me, but I told him I do wish to help the young man and if it would be possible to reduce this bail they would let me know.

So they made a telephone, I believe, to the authorities in Washington and in the afternoon they call the office and they said, "Mr. Petite, we were successful to reduce this bail to $2,000 in order to accommodate the young man."

I told him it was my duty, he was in a strange country, and he was crying. I thought it was my christian duty to help the young man.

I went back to the jail and I said to him, "Now, I have been successful to reduce your bail to $2,000, but I haven't got $2,000 of cash with me but I have one bond which is a thousand dollars." I accidently had it from another case.

But I said to him, "We need one more thousand dollars," but he said to me you do your best and I'll be grateful to you.

I went to the house of Panos and Milionis. I set down, it was on Greene Street; and it is there now, but a different address.

I talked to the gentleman there and he said, "I have a two thousand dollar bond and I'll be very glad to let you have it, but you will be responsible and you will have to pay the premium."

I agreed to that and I returned back to the Baltimore City Jail and I told him that I was successful to obtain another thousand dollars.

I went back to the Immigration with the two thousand dollar bond and I got a receipt; and in the evening he was released.

Q. What date was that? A. October 30, 1951.

Q. Now, was that 30th the day that you went over to see him? A. Yes, I went early in the morning.

Q. And you got the amount on the same day, the 30th? A. Yes, sir, I did, in and with Your Honor's permission may I get this paper?

(Witness gets paper.)

(The Witness) The first time, as I spoke before Your Honor and members of the jury I did not complete the story, but I want to make two or three things.

The second time that I went there he took out this piece of paper which convinced me that he was the boy that he was telling me he was, this paper I have photostated and I have here.

He told me that his uncle who was back in 1919 my employee had taken him to the other side, and he said for better proof here is this piece of paper, so when I saw that, I really thought that that was the boy for whom I had acted as an interpreter to attend his mother in confinement.

And he told me all of that which related to the family of Sitaras. On the strength of that I in good faith began to represent him.

We attended these hearings, and I always asked him, "I want the true facts and I want you to tell the officers the truth."

And I accepted then as I have accepted the responsibility of bringing my name and also put up the two thousand dollars bond out of my pocket.

On the contrary, it turned out to be a so-called nightmare for me because as you heard the testimony yesterday from him and his relatives, they have put the entire blame

upon me, and I have no intention to represent anybody like that. I would not—

(Mr. Pierson) Objected to. That is argument, Your Honor.

(Mr. Flynn) Well, if Your Honor please—

(The Court) I think it is argumentative, but under the circumstances Mr. Petite is entitled to say what he knew or what he did not know, what he said and what he didn't, and I think he can tell the whole story.

Q. (Mr. Flynn) Go ahead. A. After he was released, he went to Chester, Pennsylvania.

Q. You say "he went"? A. The alien went.

Q. By himself? A. No, he had to pay — I discussed this, and I discovered he had one of his cousins coming over here picking him out—

(Mr. Flynn) Just a minute.

(The Witness) I'm sorry.

He had a cousin coming over here and picking him up and taking him to Chester.

Q. (Mr. Flynn) All right, you say he had a cousin coming over here and picking him up and taking him to Chester? A. Yes.

Q. Do you know who that cousin is? A. His name, it was Sitaras, the Sitaras boy that was here yesterday from Marcus Hook.

Q. Marcus Hook? A. Finally he said to me, he said, "I found people who knew my family," and he said, "I'm going to have a lawyer from Chester, Pennsylvania, to bring you the affidavit and you will proceed."

In due course, I have the envelope here — may I get that envelope, sir?

Q. Yes. A. First, I received a telephone call from an attorney, Anthony K. Kapourelos, Esquire, from 126 East

Fourth Street, Chester, Pennsylvania, wherein there was three affidavits, and in due course when the hearings took place, I did present them to the Immigration.

Q. Now, before you go on, this envelope that you say you received from an attorney in Chester, Pennsylvania, some affidavits, and how many affidavits? A. There was three affidavits.

Q. Now, these people, where did these people live? A. They lived in the vicinity of Chester, Pennsylvania, a little town outside of Chester known as Marcus Hook.

Q. Now, you also said that you presented these affidavits at a hearing. Where was that hearing? A. After the second hearing we had here.

Q. Let's get the first hearing first now. A. The first hearing was in Baltimore City.

Q. In Baltimore City, and you presented the — go ahead now. A. I presented the affidavits in good faith in due course. The testimony was taken, and then they referred the matter to the Philadelphia Office to identify the alien.

Q. Do you remember when that hearing was? A. It was April 25th, I think, 1952, if I'm not mistaken.

Q. The hearing on April 25, 1952? A. '52 or '53.

Q. Is there any record of that?

Was it February A. February 14th up here.

Q. Up here? A. Yes, and June 16th.

Q. Yes. A. But the hearing in Philadelphia was.

Q. Philadelphia? A. Yes.

Q. I thought you said the hearing in Baltimore. The 17th was Philadelphia? A. Yes.

Q. And that was in 1952? A. Yes.

Q. Go ahead. A. And the testimony was in, the testimony was given by these witnesses, and the matter was

pending, in both hearings, pending here and in Philadelphia.

Q. Can you tell us this now. I'm confused, and I am sure the jury must be too.

Why was there a hearing in Philadelphia? A. Because the jurisdiction of the Immigration and the witnesses that executed the affidavits were from Philadelphia, and in order to identify the alien the hearing was held there.

Q. For the purpose of identifying the alien? A. Yes.

Q. All right. Go ahead. A. So after we had the hearing in Philadelphia, I returned to Balitimore, and I was expecting from time to time to hear the results of these hearings; but I never heard any result until sometime in November 1954 when I was indicted.

Q. Indicted where? In Philadelphia? A. Philadelphia, and I had to appear there, and then after the Philadelphia matter again I was indicted on August 21, 1956.

Q. Now, before you go on with that, you brought out this indictment business.

What were you indicted for in Philadelphia? What crime did they charge you with up there? A. The charge was a conspiracy.

Q. Conspiracy? A. Yes.

Q. Conspiracy to do what? A. Conspiracy to admit John George Sitaras as a citizen of the United States.

Q. Let's find out definitely what it was all about.

Who else was indicted with you up there? A. The three persons who issued the affidavits: The alien himself and Louis Sitaras, the man with the mustache who was here yesterday.

Q. Now, there was an indictment, was there not, in two counts? A. Yes.

Q. What was the first count for? A. Sir, I don't recall the counts.

(The Court) I suppose you have a copy of it.

(Mr. Flynn) I've got it here some place, but I've got so many papers I can't keep up with them.

(Mr. Millio) Here it is, Mr. Flynn.

Q. (Mr. Flynn) Now, here is a copy of the indictment. Now, there were two counts.

Your Honor, may I save time explaining this?

(The Court) Yes.

(Mr. Flynn) If you would rather—

(The Court) You can make a summary of it or read it, and if Mr. Pierson doesn't agree with the summary, he can say where he disagrees.

Q. (Mr. Flynn) Well, now, in the first count of this indictment, you and Pantelis S. Pahides and Georgios Kostatos and Louis Sitaras— A. Yes.

Q. He was the man up there in Marcus Hook, and he was one of the men who gave an affidavit? A. Yes.

(Mr. Flynn) This is not the conspiracy indictment.

(The Court) If the copy of the indictment is here, we ought to have it.

(Mr. Pierson) We have it, Your Honor.

(The Court) Mr. Flynn has brought it out.

(Mr. Flynn) I can't lay my hands on it immediately.

(The Court) Let me see the papers in this case here.

(Mr. Flynn) Do you have it?

(Mr. Pierson) I think I have a copy of it.

Q. (Mr. Flynn) Now, this indictment, in the first count it's an indictment to commit conspiracy to make false, fictitious and fraudulent statements to the Immigration and Naturalization Service, an agency of the United States and

conspiracy to defraud the Immigration and Naturalization Service, an agency of the United States.

Now, that is briefly what the charge was, and you and Pantelis S. Pahides— A. Yes.

Q. And Kostatos? A. Yes.

Q. And Louis Sitaras of Marcus Hook? A. Yes.

Q. That's the man that was here testifying? A. Yes, and one of them was the alien, this man back here.

Q. He is the boy who was here, and the other three are the men who made the affidavits? A. Yes.

Q. Now, that's the first count? A. Yes.

Q. Now, the second count—

(The Court) Mr. Pierson, do you have a copy of it?

(Mr. Pierson) Yes.

(The Court) I think a copy was filed with the motion to dismiss on the double jeopardy claim.

Q. (Mr. Flynn) Now, that count charges that on February 23, 1951 you committed this crime? A. Yes.

Q. And continuing until February '54, in the conspiracy indictment.

Now, the second count charges that on or about October 23d and continuing on until February '54 that Kostatos, Katsaros, Pantelis Pahides, Georgios Kostatos, yourself, George Petite, and George Sitaras, and then the same people that were in the first count? A. Yes, and this man Sitaras from Marcus Hook, this man who testified here.

Q. And also Louis Sitaras of Baltimore was a defendant in that case? A. Yes.

Q. "Did unlawfully, wilfully, knowingly conspire, confederate and agree together and one with the other to commit an offense against the United States, to wit: to defraud the United States and an agency thereof, to wit: the Immi-

gration and Naturalization Service; more particularly, said defendants did conspire, confederate and agree to obstruct the enforcement of the Immigration Laws."

Now, that was the charge, the two charges in the conspiracy indictment? A. Yes.

Q. Now, at the same time were you also not indicted, was there not also an indictment for subornation of perjury? A. Yes.

Q. Were you involved in those indictments for subornation of perjury? A. Yes, I was.

Q. Now, on the very same day that that indictment was returned, there was an indictment against you that "Beginning on February 8, 1952 and in divers times thereafter, you, George B. Petite"— A. Yes.

Q. "—in the Eastern District of Pennsylvania did knowingly, wilfully, and unlawfully procure and suborn Pantelis S. Pahides also known as Peter S. Pahides to commit perjury?" A. Yes.

Q. "—in connection with proceedings being conducted pursuant to statute by the United States, to wit, the Immigration and Naturalization Service."

Now, this Pahides is one of the men from Philadelphia? A. Yes.

Q. Or in Chester? A. Yes, yes, Marcus Hook.

Q. Now, in the second count of this indictment you were charged with wilfully and unlawfully procuring suborning Louis Sitaras? A. Yes.

Q. Now, that's the Louis Sitaras of Marcus Hook? A. That's right, he was here yesterday.

Q. He's the man who was here yesterday? A. Yes.

Q. You were charged that you did unlawfully procure and suborn Louis Sitaras to commit perjury in connection with proceedings being conducted pursuant to the statute by an agency of the United States? A. Yes.

Q. And in the third count you are charged that on February 8th and at divers other times that you in the Eastern District of Pennsylvania did knowingly, wilfully, and unlawfully procure and suborn this Gustav Katsaros — that's the other, the third man? A. The third man, but he was not here yesterday.

Q. He was not here yesterday — "to commit perjury in connection with a proceeding being conducted pursuant to statute by an agency of the United States," and so on.

Now, then, did you go to trial on these indictments? A. Yes, we did.

Q. Where, in Philadelphia? A. Philadelphia, yes.

Q. Now, what plea did you enter? First of all to the subornation of perjury, and, incidentally, that's the same thing that you are charged with here except that they are different people? A. Yes.

Q. Now, what plea did you enter as to this subornation?

(The Court) The subornation dealt with the affidavits, the testimony in Philadelphia.

(Mr. Flynn) The affidavits.

(The Court) Yes, the three affidavits which were offered in the hearings in Philadelphia.

(Mr. Flynn) That's right, Your Honor.

(The Court) And the charge was subornation of perjury in connection with the testimony given at the hearing in Baltimore?

(Mr. Flynn) Yes, that's correct, sir.

Q. (Mr. Flynn) Now, what plea did you enter as to this subornation of perjury in Philadelphia, subornation of perjury, that is? A. I believe it was not guilty, sir.

Q. You entered a plea of not guilty? A. Yes.

Q. In those cases? A. Yes.

Q. Now, as to the two counts in the conspiracy indictment, what plea did you originally enter as to those two counts in the conspiracy indictment? A. Not guilty.

Q. Not guilty.

Now, were they not all tried together at the same time? A. They were.

Q. Now, what was the conclusion or what was the outcome of these cases in Philadelphia? A. As to the entire, as to everybody.

Q. Yes, everybody. Take the conspiracy case first, the two counts in the conspiracy case, but you said you had pled not guilty to each one of the counts.

Now, how long was the trial up there? A. The trial was three or four days.

Q. Three or four days? A. Four days.

Q. Now, at the end of that time did you or did you not change your plea as to any part of the conspiracy indictment? A. When the — it was Friday afternoon, and my witnesses were supposed to be there sometime Friday afternoon.

Q. I am asking—

(Mr. Pierson) Objected to.

(The Witness) Yes, sir.

Q. (Mr. Flynn) Did you at any time after the four days or any time make any change in your plea? A. Yes, sir, I did.

Q. Well, now, did you change your plea as to both counts or only as to one count? A. My understanding was as to both counts.

(The Court) I think not, Mr. Flynn.

(The Witness) As to one count.

(The Court) The transcript of the record shows that he changed his plea as to Count 1.

(Mr. Flynn) Count 1.

(The Witness). Yes, I am confused.

(Mr. Flynn) Changed his plea as to Count 1.

(The Court) That's what the official transcript shows.

(The Witness) At the suggestion of counsel.

Q. (Mr. Flynn) All right. You changed your plea as to Count 1, and instead of pleading not guilty, you entered a plea of— A. Nolo contendere.

Q. Nolo contendere.

Now, I know that His Honor will tell the jury as to what a plea of nolo contendere is.

It is not a plea of guilty? A. No.

Q. Now, then, what happened to the first count of the indictment? You pled nolo contendere to the first count, and what happened to the other count in the indictment? A. The other count of the indictment was dismissed.

Q. Dismissed? A. Yes, in open court.

Q. What happened to the indictment for subornation of perjury against you? A. They were, after the trial was over, the Assistant United States District Attorney recommended non pros.

Q. Non pros, and they were dropped, too, against you? A. Yes.

Q. So that the consequence of those trials was that you had pled nolo contendere to one count of conspiracy indictment and the indictment as to subornation of perjury was dropped against you? A. Yes, that's correct.

Q. And that was after, was it not, all the testimony was in up there, that's the Government's testimony was all in? A. That's right.

Q. Well, now, we might as well go all whole on this, on this nolo contendere plea, what happened to you? A. Well, I was imprisoned for two months.

Q. In prison for two months? A. And I paid a $500 fine.

Q. $500 fine. Now, then, that trial was when, did you say? A. It was, it began the 19th day of September 1955 and ended, I believe, the 23d or 24th of September 1955.

Q. Now, at that time did this man Sitaras, the one we had here, testify for the Government? A. Yes, they brought him there from Baltimore to Philadelphia.

Q. What kind of a plea did he enter in the case? A. First he entered a plea of not guilty.

Q. And then during the course of trial, did he change his plea? A. That's right.

Q. To guilty? A. Yes.

Q. And testified for the Government? A. Yes.

Q. Now, there has been a great deal of testimony here about trips that you took to Chester with this man, and I want to ask you, first of all, this question:

Did this man ever live in your house? A. The first time I heard of it was in Philadelphia when I was confronted with such statements.

Q. Well, now, answer yes or no, did he? A. No, sir.

Q. He did not? A. Absolutely no.

Q. Do you know where he did live, of your own knowledge? First of all, do you know anything about where he lived in Baltimore? A. I know after, after he get the address to the Immigration, he had the same address on 36th Street, the same one he had.

Q. 36th Street? A. 805 West 36th Street.

Q. Did you ever make any trips with him to Chester or Philadelphia or any place? A. The only time I went to Philadelphia is when I was requested by the Immigration Service to produce the original affidavit in Philadelphia.

Q. You did that at the request of the Immigration and Naturalization? You were told to produce him in Philadelphia? A. Yes, I had to produce it in Philadelphia.

Q. Now, then, I think there was some testimony here from a man from Wilkes-Barre yesterday who said, I think, that you came to see him in his office, and Sitaras too; wasn't it? A. Well, the whole Sitaras family was involved here.

Q. Yes. A. They are all related.

Q. My question is, did you or did you not ever take this man up to Wilkes-Barre to see this man? A. You mean, Mr. Flynn, you mean Wilmington?

Q. Wilmington, Wilmington, Delaware. A. No, I did not.

Q. You did not? A. No, sir. In fact, the same story, he wanted to produce his wife to say she came to Philadelphia, and Mr. Sitaras was here yesterday, and his wife told him he should be ashamed of himself, that he should be ashamed to take the stand.

(Mr. Pierson) I object to that unless he produces the wife.

(The Court) Are you saying what the witness who was here yesterday said or what his wife said?

(The Witness) Your Honor, I am sorry, what the wife said.

Q. (Mr. Flynn) Well, was it said in the presence of this man here? A. Yes.

Q. All right. A. And she was crying and left the courtroom.

(The Court) I will let it stay in.

Q. (Mr. Flynn) Go ahead. What did the lady say in the presence of this man? A. The lady said to him, "You know Mr. Petite was not in our house the date of such occurrence." She said, "How can you bring me down here?"

And she left outside of the entrance of the courtroom when the trial was going on.

Q. Well, now, it's my understanding that you made no trips with this fellow outside Baltimore except the time

when you were requested to show by order of the Immigration Service to produce him in Philadelphia? A. Yes, that was the trip that I made.

Q. Did he testify in the hearing in Philadelphia? A. No, I don't believe he did. I mean, it's now been so many years, and I wouldn't want to—

Q. Did you testify? A. No, I didn't testify; I conducted the so-called hearing.

Q. You were all through this proceeding, were you, his lawyer? A. I was.

Q. Now, did you ever receive from him any compensation of any kind for the work you had done? A. Not a penny. He told you yesterday the truth about that — no, the day before. Excuse me.

Q. When he said you were his benefactor? A. That's right. I was a victim of circumstances.

Q. Now, then, you started to tell this story before. Why was it you were interested in this man's story at all, and what was it you started to say about a baby having been born over there? A. A similar family lived in the City of Chester, Pennsylvania where I was called into interpret and help them, and sometime in the early part of — I left Chester, Pennsylvania to return to law school in New York City in September 1922, and this time in 1925 this family left, and they were in Greece, and I understand now from the efforts that I made, that the family was killed during the war or died from starvation,

But the alien here got the information, and somehow he took it upon me to take me for a ride, and I fell for it. I was a victim of circumstances.

I have never done anything like that and there was no reason for me to do it. I was trying to be a good Samaritan and a good christian and I have not received up to today not five cents. I have served a jail sentence for no reason. I was a victim of circumstances, if I knew the truth, and the only thing that the Immigation would do and say,

"Now, Mr. Petite, this man is not the man that you are supposed to represent; he's a phoney. He is a fellow that is trying to put something over you."

If they would do that, I would be very glad to withdraw and be thankful for it, and the only thing I knew was when I was indicted for this charge that you ladies and gentlemen have heard, and the case has not been completed; the case is still pending as far as I was concerned, and I am still attorney of record, and I have received no definite decision one way or the other, and he travels all over the country, and nobody knows what the status is.

Q. Well, now, you say that he travels all over the country. What information do you have or what do you know about it? He did admit here yesterday that he went to Atlantic City, he went to Florida and he went to Pennsylvania. Do you know of any other places he's been traveling around in the last seven years? A. Yes, he's been out in Warren, Ohio.

Q. Well, he's living there? A. Yes, he's living there and he has been in an accident, and they were trying to pin the accident on me that I had caused the young man—

Q. Just a minute. He did have an accident? A. Yes.

Q. Do you have any proof to that other than a rumor? A. Well, I mean the gentleman who was over here the other day was there for seven days and was at this house in Pennsylvania, I mean in Warren, Ohio.

Q. This gentleman? A. This gentleman right here, and I think his name is Hoffstetter.

Q. Well, that's something somebody told you? A. Well, I'm sorry.

Q. When was the first time that you heard or were told or found out that this man was not John Sitaras? A. Sometime in the year 1954 when a telephone call came to me from the office of the local director of Immigration by a fellow named Durphy, and he opened the telephone and

he says to me, he says, "Hello Big Greek Lawyer. This is somebody from Immigration."

I says, "Who is it?"

He says, "You find out. You find out who your client is, George Kostatos or George Sitaras."

And then he closed the telephone on me.

Q. Now, when was that? A. This was late in 1954. I thought it was the thunder that hit me, thunder struck, something over the head. I didn't know anything about it.

Q. That is the first time you say that the Immigration authorities ever advised you, the man's counsel, that this man was not the man he held himself out to be? A. That was it.

Q. Is that what you say? A. That's my statement, sir.

Q. That up to that time you had never been advised by the Immigration authorities or any one else that this man was even suspected of being someone other than the man he held himself out to be? A. If I would have known of it I would be a plain damned fool, to excuse the expression, to be in the case, and I would walk across the street and offer a paper and say, "I hereby withdraw from the case," and everything would be over.

Q. And all during that time you were counsel of record? A. I am still counsel of record.

Q. With the Immigration authorities? A. Yes.

Q. Now, after this telephone call that you say you got from Mr. Dunphy or his secretary, after that— A. It was a Mr. Dunphy because I knew his voice.

Q. At that time he didn't tell you any of the details of this, did he? A. I didn't know. I was just shocked to hear such a remark.

Q. After you were shocked, what did you do? Did you go over there and make an investigation, or what did you do? A. I didn't make an investigation but I tried to com-

municate with the alien in Marcus Hook or outside of Chester, and I couldn't communicate with him.

I did call these people and they wouldn't give me any information.

Q. Who are these people? A. Pahides, these fellows in Pennsylvania, and they wouldn't give me any information. They told me that he had changed the job and he had changed the room, and I went to Philadelphia and I wanted to find out.

And a few days later I was indicted for conspiracy.

Q. Well, now, let's see if we understand this. I am not sure whether I do. A. I'm sorry.

Q. I don't want to lead you but I want to get this clear.

Are you saying this, that the Immigration and Naturalization people did not at any time advise you of what their suspicions at least were about your client until a couple of days before you were indicted in Philadelphia? A. That is true, sir.

(The Court) I don't understand what you say that Mr. Dunphy said to you in this telephone call. What did he say in that call which you say was the first information you had?

(The Witness) He said to me, he says, "Hello there. Big Greek Lawyer."

I said, "Who is this?"

He says, "You find out who this fellow Kostatos or this fellow Sitaras is in a few days."

And they hung up on me.

Have I made myself clear?

(The Court) He told you that you will find out — say it again because I am not sure because you said Kostatos and Sitaras, and I was not exactly sure whether you were

correcting yourself or whether you were quoting what he said. Just say it again.

(The Witness) There was a telephone call from the local Immigration Office late in the afternoon, the exact date I don't remember, and it was two or three days before I was indicted, or I was served with the indictment.

The man there said, "Hello there, Big Greek Lawyer."

I said, "Dear Sir, who is this?"

He said, "You find out who I am," and he said, "You find out who your client is, John George Sitaras or John or George Modestou Kostatos," and they hung up on me.

(The Court) Well, didn't you know before that that he had been arrested because he was accused of being a Greek immigrant or an alien named George Kostatos?"

(Mr. Flynn) If I may object to that, Your Honor. He wasn't arrested for that purpose. He was arrested because he was a seaman in the country.

(The Court) Well, a seaman who was in this country.

(Mr. Flynn) Yes.

(The Court) Legally, but the Government contended that he was George Kostatos, didn't they?

(The Witness) Under the warrant of arrest he was John George Sitaras and they also had "also known as John George Kostatos."

(The Court) Well, you knew that — this was not the first time that you heard the name John George Kostatos, was it?

(The Witness) No, sir, no. I am explaining to you what the first notice I had from the Immigration Service insofar as this man was not the man he is insofar as he is supposed to have represented himself to be.

If I had known of it before that I would not have been in the case.

(The Court) Wasn't Immigration contending all along that he was a Greek citizen named George Kostatos who had come on the SANTA IRENE and had gotten off?

(The Witness) That is true, sir; they were contending that.

Q. (Mr. Flynn) Now, you said that you put up a Government bond, and you borrowed one from a friend of yours, I understand? A. That's right.

Q. Where are those bonds now? Do you have them? A. No, they are in the custody of the Government.

Q. Have you made demand for the return of them? A. Yes, I have.

Q. And you have not received them? A. I have not received them.

Q. Have you been paying interest?

(Mr. Pierson) We still have the bonds.

(Mr. Flynn) You still have the bonds and this man is walking around the United States on his bonds. You say that is true?

(Mr. Pierson) Yes.

(Mr. Flynn) So he is out walking around on George Petite's bonds all over the United States testifying against him?

(Mr. Pierson) No, that isn't so. I didn't say that.

(The Court) The case about the bonds would have to be before a different forum and a different method.

(Mr. Flynn) Well, sir, the only difficulty with that trying it in a different forum, they haven't been successful.

Q. (Mr. Flynn) Have you been paying interest on these bonds? A. Yes, sir, I have.

Q. I show you these three checks. Whom are they payable to? A. John G. Panos. The three of them are the same.

Q. For what amount of money? A. Each represents one thousand dollars. The amount is $155, five dollars extra that I owed the man but this is expenses.

Q. They are interest that you have been paying on the bonds? A. Yes.

Q. That you borrowed to put up for this man? A. That's right.

Q. When you got him out? A. Yes.

(Mr. Flynn) I don't see the necessity of offering these.

Q. (Mr. Flynn) Now, Mr. Petite, this is your case. Would you please, if there is anything that you want to add to your testimony, would you please tell it to the Court, the ladies and gentlemen of the jury, if I have overlooked anything? A. Yes, sir, the testimony that I have caused Louis Sitaras of Baltimore to say certain things, that is absolutely untrue.

I told them that I will meet them at the outside of the hearing room of the Post Office Building, and I wanted them to state to the Examiners the true facts. I have had no time to make any such story: I have no time to take them in my office. Louis Sitaras was not in my office at any time, but I met them outside the room, and it as just about five minutes before the hearing started, and as the hearing started, the alien proceeded to give the testimony, and when he was through, I asked Mr. Louis Sitaras to come in, and I told him I wanted the true facts of the entire matter and nothing else.

Q. Now, while you are on that subject, did you hear his testimony in Philadelphia? A. Yes, I did.

Q. Did Mr. Sitaras testify to anything in connection with meeting you in your office that morning? In Philadelphia, did he testify in Philadelphia that he met you in your office that morning? A. That's right.

Q. He did? Well, no, he didn't? A. I'm not sure as to — excuse me, sir. He said that he was in my office. I don't know what you mean, sir.

Q. Go ahead. Do you have anything else you want to say? A. Well, as to the—

Q. Well, let me ask you this question:— A. Yes, sir.

Q. —he has testified that the first time he met this man he was brought into his place by a man named Manikis? Is that it? A. No, Nick Sitaras.

Q. Nick? A. Nick, N-i-c-k, Sitaras.

Q. That's the first time he met him. Do you know Nick Sitaras? A. Very well, yes.

Q. Is he around Baltimore? A. Yes, he's around Baltimore, but he says he doesn't want to inject his nose in anywhere else.

Q. All right, and if he is here, he is available to be brought in to be sure whether he did bring this man in?

(Mr. Pierson) Objected to.

(The Court) He is available to subpoena by either side.

(Mr. Flynn) Either side, yes.

Q. (Mr. Flynn) Now, did you ever go over to this man's place with this alien? A. No, sir, I was not.

Q. You were not over there? A. No, he said that I was the one who brought him over. I did not do such thing.

The alien came to the office on different occasions, and at this particular hearing, he says to me, "I have the witness." He says, "He's going to be across the street," and I told him I will pick up the file and I will meet you there.

Q. Did you ever talk to this man Sitaras, the one who testified here, who said, who said he went to your office, did you ever talk to him at all prior to the time of his testifying in that hearing? A. No, sir, not for any, for the matter that was pending before the Immigration. I

talked to him in church and I talked to him in different places, but I didn't approach him on the matter. The alien brought him as a witness that he knew him.

Q. Now, is there anything else you want to say? A. As to—

Q. As to anything about this thing which you think the jury ought to know. A. I want the jury to know all the facts.

Q. Have you told them all the facts? A. Insofar as I am concerned, I told them the best way I knew them.

* * * * * *

(St. Tr. 366-369):

CROSS EXAMINATION

By Mr. Pierson:

Q. You said you came from Greece at the age of eleven or twelve by yourself? A. That's right.

Q. You are a naturalized citizen? A. Yes, I am.

Q. And you were naturalized— A. 1921.

Q. March 7, 1922. A. 1922.

Q. According to the paper which I have, and in this connection you submitted a petition which I will show you, and in it you give your age, give your date of birth as September 15, 1897; is that right? A. Well, I want to explain that, sir. It was the passport which I had that they had to give me to come to this country and they had put a different date, and I had to go according to the passport, and that's where the application was made for this.

Q. Why did you have to put a different date? A. Well, on this passport.

Q. Yes. A. So you would be eligible to be admitted from one country to another.

Q. In other words, if your true birth date had been given—

(Mr. Flynn) I object to that, sir. I don't see any reason calls for that. I object to this line of testimony.

(The Court) I think it's admissible, Mr. Flynn. I will overrule the objection.

(Mr. Flynn) It's not only the question of whether or not he gave a wrong date, but it's going back to when he was eleven years old.

(Mr. Pierson) It seems to me to be a proper source of inquiry to know whether he was actually eleven and not sixteen.

(Mr. Flynn) If Your Honor please, if that is true, why haven't the authorities done something about this man?

(The Court) It may be offered with respect to whether his birthdate was correct, and it may be it was 1897 or it may be that it wasn't. I don't know. He says now that it was wrong.

Q. (Mr. Pierson) You were not born in 1897? A. Well, I want to be truthful, sir, as to that question. In Greece in those days they did not keep accurate birth and other certificates of citizens, but this was in accordance with the passport that they had given me for the country.

Q. And that was so you could get into the United States? A. At the time the Immigration insofar was open, and it was only as a matter of form.

Q. Was as a matter of form? A. Yes.

Q. So that according to your petition for naturalization at least you were sixteen years old when you entered the country? A. I don't deny that, sir. It has been so many years ago.

Q. Well, I will show you this so that there is no doubt about it. This gives your date of birth as — date of birth as July 7th — no.

It says, "I was born on the 13th day of September 1897 and immigrated to the United States from Greece on or about November 19, 1913." A. That's right.

Q. So, that according to that, at least according to your application for naturalization you were sixteen when you arrived in the United States A. Sir, I believe that may be correct because it was in accordance with the passport that they had given me before I left the country.

Q. So that that would be your correct age; is that correct? A. I could not deny anything like that, sir. In those days they did not keep accurate records.

* * * * * *

PROCEEDINGS

(Mr. Flynn) Your Honor, may I at this time renew the two motions that I made, the one at the end of the case as to an instruction of a verdict of not guilty and as to the point of double jeopardy?

(The Court) The motions are overruled.

The jury may retire for a few minutes. I don't think you will be very long. I want to go over the questions in the charge.

Now, counsel want to come up to the Bench for a minute.

(Discussion at the Bench.)

(The following occurred at the Bench.)

(The Court) Either yesterday or the day before, a juror asked Mr. Lowell Bowen, my law clerk, in the elevator whether Mr. Petite was still practicing law, and Mr. Bowen replied that it was not for him to make a statement to a juror, but if the Judge thought the matter was important he would include it in his Charge to the Jury.

I am telling counsel for both sides this so that they may know that that question was in the juror's mind and they can pitch their arguments accordingly.

If it is mentioned by either counsel in the argument, I think that along with the definition of nolo contendere that I will give to the jury, that I should state as a fact that Mr. Petite is still practicing law.

(Mr. Pierson) The Government makes no objection to that.

CHARGE TO THE JURY

(The Court) Members of the jury, the time has now come for me to charge the jury; that is to instruct you on the law on the case. The functions of the judge and the jury are quite different.

It is my duty as judge to instruct you as to the law applicable to this case; it is your duty to accept without question for the purposes of the case the statements which I make to you about the law. But it is the province of the jury, your province, to determine the facts from the evidence. In my instructions to you on the law of the case, I may refer to some of the evidence for purposes of illustration or for advisory help to the jury in the logical application of the law to the facts as the jury may find the facts, but I emphasize again that the jury are the judges of the facts and that it is the duty and the function of the jury to appraise the evidence and to determine from the evidence the facts of the case, and that any reference that I may make to the evidence is advisory only.

First I want to refer to some of the well-established principles of law which are applicable to all criminal cases, of which this is one.

The charges made in the indictment are no evidence of the truth of the charges that are made. The indictment is merely the formal way of presenting the charges, and the defendant cannot be convicted except upon the determination or the truth of one or more of the charges by the unanimous verdict of the jury.

Another rule applicable to criminal cases in the defendant is entitled to the presumption of innocence. That is, of course, an important right of a defendant in any criminal case. The presumption of innocence with respect to each count continues throughout the trial until the Government has established the truth of the charge beyond a reasonable doubt.

In this respect a criminal case differs from a civil case. In a civil case, such as you may have sat on at some time, the jury properly decides a case for a plaintiff or a defendant dependent upon the mere preponderance of the evidence. That is to say, whether the proof offered by the plaintiff is weightier than that offered by the defendant, or vice versa.

But in a criminal case the burden of proof upon the Government is greater. It must establish the proof of the charge beyond a reasonable doubt.

The jury should not reach a verdict based upon conjecture or speculation, nor should it be based upon sympathy or emotion of any kind in favor of the defendant or against the defendant but only on the evidence consisting of the personal testimony of the witnesses testifying under oath and the documents submitted in evidence as exhibits.

What do we mean by the words "beyond a reasonable doubt"? A reasonable doubt means a doubt founded upon reason. It does not mean a fanciful doubt or a whimsical or capricious doubt, but anything relating to human affairs depending upon human testimony is open to some possible or imaginary doubt.

When all of the evidence in the case, carefully analyzed, compared and weighed by you, produces in your minds a settled conviction or belief of a defendant's guilt, such a conviction as you would be willing to act upon in matters of the highest importance relating to your own affairs that it leaves your minds in such a condition that you feel an abiding conviction amounting to a moral certainty of the truth of the charge, then and in that event you would be free from a reasonable doubt.

Absolute or mathematical certainty is not required, but there must be such certainty as satisfies your reason and judgment and upon which you feel conscientiously bound to act.

The defendant has introduced evidence before you tending to show his good character for honesty, integrity, truth, and veracity.

If in the present case, the good character of the defendant for these qualities is proved to your satisfaction, then such fact is to be kept in mind by you in all of your deliberations, and it is to be considered by you in connection with the other facts in the case.

If after a consideration of all the evidence in the case, including that bearing upon the good character of the defendant, the jury entertains a reasonable doubt of the defendant's guilt, then I charge you that it is your duty to acquit him. But if the evidence convinces you beyond a reasonable doubt of the defendant's guilt, you should so find notwithstanding his good character.

Two of the witnesses called by the Government, George Kostatos and Louis Sitaras of Baltimore, admit that they committed perjury. That fact does not require you to disregard their testimony in this case; but it may be considered by you in considering their credibility.

The credibility of the witnesses is for the jury. I suggest that you should consider their manner of testifying, whether the testimony that they have given squares with the admitted facts in the case, whether the testimony they have given squares with the testimony of other witnesses whom you do believe. And I repeat that it is the province of the jury to determine the credibility of the witnesses and of the testimony which they have given.

The consequences of a verdict of guilty, if you should bring in a verdict of guilty, it not the responsibility of the jury. If a verdict of guilty is brought in, the sentence of what shall be given, what shall be done, is entirely the responsibility of the judge.

What I say about the facts is not intended to convey to you any opinion that I may have about the guilt or innocence of the defendant nor to imply that I have any such opinion; nor it it intended to convey any opinion that I may have as to how any of the questions of fact in the case should be answered.

In determining the guilt or innocence of the defendant, and any subsidiary questions of fact involved in the case, you may consider not only the evidence to which I may refer and the evidence which may have been referred to by counsel in their arguments, but you may also consider any testimony or exhibits in the case, whether referred to by me or by counsel or not which you may believe to be important or helpful in determining the question of the defendant's guilt or innocence on either of the counts in the indictment, subject, of course, to the instructions which I give you about the law.

There are two counts in the indictment. If you have been in criminal cases before, you know that there are two charges made, and you must bring in a separate verdict on each count of the indictment. The indictment reads at the beginning, starting off with the first count:

"The Grand Jury for the District of Maryland charges:

"Beginning on or about the twelfth day of October 1951, and continuing until the sixteenth day of June, 1952, at Baltimore, in the State and District of Maryland, George B. Petite, did knowingly, wilfully and unlawfully procure and suborn Georgios Modestou Kostatos, also known as Georgios Modestou Kostatos, to commit perjury in a proceeding being conducted under the laws of the United States, to wit, the Warrant Hearing of Georgios Modestou Kostatos being conducted by the Immigration and Naturalization Service of the Department of Justice, said proceedings being a case in which the law of the United States authorizes an oath to be administered, in that George B. Petite did knowingly, wilfully and unlawfully procure the said Georgios Modestou Kostatos to testify wilfully and corruptly on February 14, 1952, at Baltimore, in the District of Maryland, the said Georgios Modestou Kostatos having taken an oath to testify truly before John C. Carney, a competent officer of said Immigration and Naturalization Service duly authorized by law to ad-

minister an oath and to take testimony, to the following material matters which the said Georgios Modestou Kostatos then and there did not believe to be true, to wit:

(1) That his name was 'Ioannis Georgios Sitaras (John George Sitaras);

(2) That he was born in the United States;

(3) That he was not born in Greece;

(4) That he was baptized in Philadelphia, Pennsylvania, in 1920;

(5) That his parents lived in Chester, Pennsylvania, at the time of his birth;

(6) That his father's name was Georgios Sitaras;

(7) That his mother's name was Maria Spanos Sitaras;

(8) That his uncle, Ioanis Costas Sitaras (Kostas Sitaras), took him at the age of four or five to Greece;

(9) That he was not registered in any military records in Greece;

(10) That he never served in the military forces of any country;

(11) That he used a friend's papers in order to obtain a job on the ship SS SANTA IRENE;

all of the foregoing statements and testimony of the said Georgios Modestou Kostatos being false, the said Georgios Modestou Kostatos then and there knowing the same to be false; and the said George B. Petite then and there well knew and believed that the foregoing statements and testimony, when made, would be false, and then and there knew and believed that the said Georgios Modestou Kostatos would wilfully and corruptly testify to facts which he knew to be false."

The defendant is charged with what we call subornation of perjury, and that is Section 1622, Title 18, United States Code, which deals with crime, which provides: "Whoever procures another to commit any perjury is guilty of subornation of perjury" and shall be punished as indicated in the statute, or may be punished as indicated in the statute.

Section 1621 defines perjury, because you see that there are two elements to the crime of subornation of perjury. Someone must have committed perjury, and then that the defendant procured that person to do so, as the statute says.

Now, what is perjury? To find out what perjury is, I will read the preceding section of the Code, which says that:

"Whoever, having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury and shall except as otherwise expressly provided by law" be punished as provided in the Section.

Now, that is the definition of perjury. Some of the elements of perjury in this case there has been no contradictory evidence about. There is the evidence, for instance, that the witness Carney was a Deportation Examiner of the Immigration and Naturalization Service; and he was authorized to conduct hearings held at Baltimore at which George Kostatos and Louis Sitaras of Baltimore testified; that he was authorized to administer oaths; and that Kostatos and Sitaras each took an oath to testify truly.

I recall no evidence to the contrary on any of those points.

The next element of perjury is that such person, that is, Kostatos in the first count, and Sitaras in the second count, wilfully and contrary to such oath states a material matter which he does not believe to be true.

Now, as to that element the law places a special burden on the Government.

The jury is instructed that in a prosecution for subornation of perjury the actual perjury must be proved by two credible witnesses or by one credible witness plus corroborating circumstances. The witnesses may include the person or persons who testified that he or they committed perjury if the jury believes him or them. If the jury believes the testimony of Georgios Kostatos to the effect that he testified falsely at the hearing on February 14th, 1951, and if they further find that other circumstances in the case are corroborative of his testimony, then his testimony, plus the corroborating circumstances, if believed by the jury, would be sufficient to prove that perjury was committed by the said Georgios Kostatos.

And similarly in connection with the second count, if you believe the testimony of Louis Sitaras to the effect that he testified falsely at the hearing on June 16th, 1952, if you believe further that other circumstances in the case are corroborative of his testimony, then his testimony plus the corroborative circumstances, if believed by the jury, are sufficient to prove that perjury was committed by Louis Sitaras, because the same rule applies in each count that in a prosecution of subornation of perjury the actual perjury must be proved by two credible witnesses or by one credible witness plus corroborating circumstances.

We are now considering the first count, the one dealing with the testimony of George Kostatos in the two hearings before Mr. Carney in Baltimore.

The evidence of what he actually did testify to is the original stenographic transcript or record of the hearings, certified to by Mr. Carney, who was the first witness in the case, and the testimony of George Kostatos on the stand today that he did so testify.

The particular parts of the testimony at the hearing before Mr. Carney which the Government contends, are false are the items which I read to you when I read the counts.

Now, it is not necessary for the Government to prove that every single one of those eleven items was wrong. If any material one of them is wrong it is sufficient; but I think that most of them stand or fall together. The business about the papers, and so forth, like that, they don't have to prove every single one of those items; but the essential items, of course, in this case are that his name was Sitaras and not Kostatos, that he was born in the United States, that he was not born in Greece, that he was baptized in Philadelphia; that his parents lived in Chester, Pennsylvania, at the time of his birth; that his father was Georgios Sitaras, his mother Mary Sitaras, that his uncle took him to Greece at the age of four or five. I think those all stand or fall together.

Now, the question about whether he was registered in the military service of Greece, whether he ever served in the military forces of any country, whether he used his friend's papers in order to obtain a job on the ship, the Santa Irene, are other items which the Government claims to be false. But the failure to prove any one of those is not necessarily fatal to the Government's case if you believe they have proved the perjury and subornation of perjury in connection with the other items.

Now, the evidence tending to prove that these statements are false are — you must remember that there must be two witnesses, or one witness plus corroborating circumstances — and the evidence to prove that these statements were false are the admission of George Kostatos himself on the stand a day or two ago that these statements were false.

Second, the testimony of Michael Sitaras, the uncle of the real John George Sitaras, the boy who was born in Chester, Pennsylvania; that his nephew had died in the United States and had not been taken to Greeee as a young boy.

Third, the testimony of Louis Sitaras of Baltimore that George Dostatos was in fact George Kostatos; that he was born on the Island of Chios, lived there with his parents

and had not been brought over to Greece from America when he was a young boy.

Four, the manifest of the Santa Irene, which shows that the man who left that ship was George Kostatos, a Greek seaman.

I want to read you again the test with respect to the proof of the perjury part.

The Government must establish the falsity of the statement alleged to have been made by the witness under oath by the testimony of two independent witnesses or one witness and corroborating circumstances. Unless that has been done, you must find the defendant not guilty.

Similarly with respect to the second count which charges that Louis Sitaras of Baltimore testified falsely before Mr. Carney on June 16th, 1952. I won't read you the whole count but will just read the items which the Government claims are false;

"That Georgios Modestou Kostatos was an individual named John Sitaras, who was taken to Greece from the United States by his uncle, Constantine Sitaras, in 1927; who came to the school attended by the said Eleftherios Sitaras in the village of Kourounia, Chios, Greece, near the end of the school term; who was known as 'Big Ears Johnny', because his ears were 'flapped out'; who had a birthmark on his arm; and whose grandparents were named John Sitaras and Maria Sitaras."

Now, there again, it is not necessary for the Government to prove every one of those items. The essential part is that Georgios Kostatos was an individual named John Sitaras, who was taken to Greece from the United States by his uncle, Constantine Sitaras, in 1927, who came to the school attended by the said Eleftherios Sitaras in the village of Kourounia, Chios, Greece, near the end of the school term, and whose grandparents were named John Sitaras and Maria Sitaras. I think those stand or fall together.

Now, as to whether this boy was known as "Big Ears Johnny" because his ears flapped out, whether he had a birthmark, is part of the testimony, but I think that is relatively unimportant in this case because it might be a way in which either Sitaras or Kostatos, whichever he was, was identified, that this particular man was identified by Louis Sitaras; but those principal questions are whether he was Kostatos born in Chios or whether he was John George Sitaras born in Pennsylvania is the important question.

Now, again, with respect to the evidence that that testimony is true, which must be proved by two witnesses or one witness plus corroborating circumstances, is the evidence of Louis Sitaras himself who admits that it was untrue, the testimony of Mike Sitaras, the uncle of the real John George Sitaras, who says that his nephew had died in the United States and had not been taken to Greece; the testimony of George Kostatos, that he said he was not born in the United States and had not been brought over from America when he was a young boy, and the manifest of the Santa Irene.

So much for the proof of the perjury.

Now, the principal dispute with respect to each count is not so much whether that was perjury, but whether the defendant, George Petite, procured Kostatos and Louis Sitaras of Baltimore respectively to commit perjury.

Now, with respect to the proof of the subornation of perjury, it is not necessary to have the two witnesses. Witnesses are necessary to prove that there was perjury, but there is no requirement that the charge of subornation of perjury be proved by two credible witnesses or by one credible witness plus corroborating circumstances on the issue of the subornation. This requirement applies only to the proof of perjury.

In other words, the inducement by the defendant, or the alleged inducement by the defendant of the witnesses to commit perjury may be established by the uncorroborated

testimony of one witness if the jury believes that witness on this point.

What do we mean by "procured them to commit perjury"? That is, the definition, you will recall, of subornation of perjury in the Statute is, "Whoever procures another to commit perjury is guilty of subornation of perjury."

Now, what does that mean? To procure and to suborn, means to contrive or to induce, to instigate. That is what we mean by procuring or suborning.

The motive of the defendant, or the motive of the witnesses in testifying falsely is not important. For instance, it is not important whether Louis Sitaras testified falsely as a favor to the defendant or as a favor to George Kostatos. The point is whether he did so wilfully; and if the jury find that the defendant knowingly instigated the perjury or suggested to the witness what he should say, knowing it to be false, then I instruct you that it is not important whether the defendant did so as a favor to George Kostatos or because he hoped to receive a fee or for any other motive.

It is a question of whether the defendant did it and whether he did it knowingly and wilfully. This element, as I have said, does not have to be proved by two witnesses or one witness plus circumstantial evidence, if the evidence convinces you beyond a reasonable doubt that the defendant was guilty of such subornation.

I further instruct you that in order to sustain a conviction under the first count of the indictment, it is not required that Georgios Kostatos be or have been indicted or convicted of perjury in connection with the immigration hearing which is set out in the indictment; and in order to sustain a conviction on the second count of the indictment it is not required that Louis Sitaras, otherwise known as Eleftherios Sitaras, be or have been indicted or convicted of perjury in connection with the immigration hearing which is set out in the indictment.

The principal dispute in the case is whether or not on the one hand George Kostatos saw the defendant, George

Petite before he was arrested, and if so whether they agreed upon the story that George Kostatos was to tell knowing it to be false, and that George Petite assisted in arranging for others to support that story knowing it to be false; or on the other hand whether George Kostatos made up the story himself and did not see George Petite until after he had told the story once to the Immigration and Naturalization Service when he made the statment on October 23rd and that he deceived Petite into believing that it was true.

Now, that is the principal dispute, stated generally. Now what is the evidence on that? Some of the facts are undisputed. The Santa Irene arrived on the 12th of October in the morning. The Santa Irene left on the 13th of October. It sailed from its anchorage about noon and left the dock a little earlier. George Kostatos left the ship, the manifest showing that he was on the ship as a Greek seaman.

When George Kostatos saw the immigration people, when they came onto the ship, he did not claim that he was an American to the immigration inspector who came on the ship. George Kostatos did not sail with the ship on the 13th of October. George Kostatos was arrested on October 23rd while at the New Times Inn around 40th and Roland Avenue where he was then working.

He told the arresting officer that he was John George Sitaras, born in Chester, Pennsylvania, when they arrested him on the 23rd of October.

Now, those facts, I believe, are the undisputed facts on the issue.

Now, there was some additional evidence which came in, and I will refer to some of that evidence; but I want to remind you again that you are the judges of the facts and that you may consider any evidence in the case whether I refer to it or not, whether it has been referred to by counsel or not.

The disputed questions in this case are whether George Kostatos lived at George Petite's house for all or any part of the time between October 3rd and October 23rd; whether he lived at Mr. Petite's mother-in-law's house on Northern Parkway during all or part of that time, or whether he worked there a part of the time; whether Kostatos lived at 830 — if that's the number — West 36th Street from October 13th 1951, as the witness Moskanos testified, and as the defendant contends that the receipts which they offered in evidence tends to prove.

Now, in that connection you may consider the testimony of George Kostatos, the testimony of George Petite, the testimony of his mother-in-law, Mrs. Kosmides, and other witnesses whose testimony you think bears upon that issue.

In connection with this testimony of Moskanos and of Petite and of the others, you may consider the receipts which Moskanos testified he received under the dates shown on their face. My recollection is that he testified that he pasted each receipt on the paper the same day that he received it, and that he kept them so pasted either in his pocket or wallet or at home for five or six years before turning them over to Mr. Petite's counsel.

You may consider the testimony of George Kostatos that he had sent some receipts for some period in 1953 or 1954 to George Petite in 1953 or 1954 or thereabouts in connection with a dispute about the rent.

You may consider the testimony of George Petite that George Kostatos had sent him some receipts which he had shown or given to the landlady; but I believe Mr. Petite testified that they were not the receipts which were offered in evidence.

In considering whether that testimony is true or not, You may consider the testimony and the exhibits of the witness from the Federal Bureau of Investigation, including the photographs of the face of the receipts and what was written on the back of the receipts in Greek, which was translated to you by the interpreter; and you may

consider what effect, if any, in your opinion, those receipts and what was written on them, on the face and what was written on the back and whether or not they had ever been corrected at all, and if so, how, and what effect that has upon the credibility of the testimony of the various witnesses in this case.

Other disputed facts are whether Mr. Petite went with George Kostatos to Wilmington to see Mike Sitaras and asked Mike Sitaras to lend Kostatos his nephew's name or to identify Kostatos as his nephew.

You have heard the testimony of Mike Sitaras on that. You should consider his testimony, the testimony of George Kostatos, and the testimony of Mr. Petite and determine which one of them is telling the truth because, of course, that is a very important fact in connection with the whole picture in the case.

Another disputed fact is whether Mr. Petite persuaded Louis Sitaras to testify or suggested to Louis Sitaras what he should say knowing it to be false. That is the basis of the second count.

Now, you have heard the testimony of Mr. Kostatos and Louis Sitaras of Baltimore that Kostatos and Petite came to Louis Sitaras' place of business several times and that Mr. Petite urged him to testify that Kostatos was John George Sitaras and had been brought to Greece by his uncle.

You have heard the testimony of Louis Sitaras that he finally did it as a favor to Kostatos. The motives that Sitaras had in doing it is unimportant if in fact Mr. Petite told him what to say or instigated the perjury knowing that what was to be said was false.

In considering this testimony, again, you may consider both the fact that Mr. Kostatos and Mr. Sitaras admit that they have once testified falsely in this matter. You should consider whether in this connection the further testimony of Mr. Petite that he had never seen Louis Sitaras in connection with this matter until he saw him in the hall here

in this building just before he put him on the witness stand and did not know what he was going to say but just told him to tell the truth.

It is for the jury to say whether you believe one or believe the other, and that is the essential part of the second count.

You have heard the argument here, and I will not repeat it, about the message which Kostatos sent to the defendant on October 12th through Mr. Mitsos, whether it was delivered on October 12th or the 13th, and if so, when. I will not go into that further beyond pointing out that that evidence is evidence which you may consider in connection with the issues in this case.

Now, the defendant himself brought out the fact that in a criminal proceeding in the United States District Court for the Eastern District of Pennsylvania at Philadelphia after all of the Government's evidence was in, or even if it wasn't all in, let's take Mr. Petite statement that after all of the Government's evidence was in he changed his plea from "not guilty" and pleaded nolo contendere to the charge of conspiring to defraud the Immigration and Naturalization Service by producing improper testimony.

Now, that requires a consideration or what a plea of nolo contendere is, what it means, and what its effect is.

I will read you first a definition from one of the well-known legal dictionaries. Nolo contendere is a Latin expression which means, "I will not contest it."

It is the name of a plea in a criminal action having the same legal effect as a plea of guilty so far as regards all proceedings on the indictment and on which the defendant may be sentenced.

That is, for the purposes of that case in Philadelphia his plea of nolo contendere was the same as though he had pleaded guilty, and the judgment was entered and he was sentenced to pay a fine of $500 and to serve two months in jail.

So that his plea of nolo contendere was for the purposes of that case the same thing as a plea of guilty but it does not have the same effect as a plea of guilty so far as other proceedings were concerned.

Aside from that particular case it is not an admission of guilt, such as a plea of guilty would be. It does not admit the commission of the crime but states that no defense or opposition will be made to the claim of the Government that the offense was committed.

The plea may be made only with the permission of the Court. The admission is confined to the case at bar, that is, the proceedings in Philadelphia, and is not competent evidence against the defendant in any other cause, civil or criminal. And Mr. Petite is still practicing law in Baltimore at this time.

I want to repeat what I said to you at the beginning that what I may say to you about the facts is not intended to convey to you any opinion that I may have about the guilt or innocence of the defendant, nor to imply that I have any such opinion, nor is it intended to convey any opinion that I may have as to how any of the questions of fact in the case should be answered.

In determining the guilt or innocence of the defendant and any subsidiary questions of fact involved in the case you may consider not only the evidence to which I may have referred and the evidence which may have been referred to by counsel in their arguments but you may also consider any testimony or exhibits in the case whether referred to by me or by counsel or not which you may believe to be important or helpful in determining the question of the defendant's guilt or innocence on either of the counts of the indictment, subject to the instructions which I have given you about the law.

Now, just one final word: There are two counts in the indictment: one in connection with the testimony of Kostatos in the February hearings, and the other in connection with the testimony of Louis Sitaras of Baltimore in the June hearing.

Your verdict may be the same on both counts, but need not necessarily be the same on both counts. You may find the defendant guilty on both counts. You may find him not guilty on both counts, or you may find him guilty on either one and not guilty on the other.

You will take the indictment into the jury room with you. You must bring in a verdict of guilty or not guilty on each count of the indictment. There are just two.

If there are any exceptions to the charge, I will be glad to hear them out of the presence of the jury. The jury may go now into the jury room and place your orders for lunch and relax for a few minutes; but do not start discussing the case until I have heard from counsel for both sides as to whether they think I should correct any of the statements that I have made to you or whether I should make certain additional statements, or give certain additional instructions to you.

(Mr. Milio) Your Honor, at the beginning you said October 3rd instead of 13th, or instead of 23rd.

(The Court) You mean from October 3rd?

(Mr. Milio) Yes.

(Mr. Pierson) The Government has no exception to the charge.

(Mr. Flynn) There is nothing much of an exception Your Honor, but Your Honor said that a nolo contendere plea was the same as if he had pled guilty as far as that case was concerned. I don't believe that is—

(The Court) It has the same legal effect.

(Mr. Flynn) Legal effect.

(The Court) As a plea of guilty. That is what Mr. Black says, citing a Federal case.

(Mr. Flynn) Maybe I am too old-fashioned. I go back too far.

(The Court) Well, it has the same legal effect in that particular case.

(Mr. Pierson) For the particular case.

(The Court) For the particular case.

But it is not an admission so far as anything else is concerned.

(Mr. Flynn) Your language was that it was the same as if he had pled guilty as far as that case was concerned.

(The Court) But it has no effect on any other case.

(Mr. Flynn) On any other case.

(The Court) If I haven't made that clear, I will be glad to do it, if you will tell me how I should make that clear.

(Mr. Flynn) Well, it's one of those things, if you start to make it clear—

(The Court) Well, I read the definition, and then I read what you had to say. I thought I made it clear.

(Mr. Flynn) Maybe so. We'll leave it that way. All right.

(The Court) I will be glad to give them any further instructions if you want me to on that point.

(Mr. Flynn) No; I won't urge anything more on that, Sir.

The only other thing that occurred to me was your reference to the prosecution in Philadelphia, and I think the evidence shows — I am sure it did — that that prosecution grew out of the same situation that we have here in Baltimore and I think the jury should be so told that, that the prosecution in Philadelphia was for substantially the same thing, but of course we have gone all through this on the motion, but it has grown out of this same situation.

(Mr. Pierson) That it involves not the testimony of these witnesses.

(The Court) I will read the indictment in Philadelphia if you want me to.

(Mr. Flynn) Well, there are five indictments to read.

(The Court) There was only one he pleaded to.

(Mr. Pierson) Only one he pleaded nolo to.

(Mr. Flynn) I know, but the subornation charge was dismissed.

(Mr. Pierson) The Government dismissed that.

(The Court) But the subornation did not deal with these witnesses testifying in Baltimore. They dealt with witnesses whose affidavits had been offered in Philadelphia.

(Mr. Flynn) But it was about the same subject matter, in other words, whether he was an alien or a citizen.

(The Court) But I have made a ruling of law on which you have an exception.

(Mr. Flynn) I understand that. That's double jeopardy.

(The Court) And you have your exception.

If I told the jury about it, I would have to stand by my finding on the law. If I read them all of the indictments in this case I would have to tell them that they are separate cases and that what happened in those cases has no bearing whatever on what happened in this case.

(Mr. Flynn) Well, I'll just take an exception, Your Honor.

(The Court) Well, what do you want me to do?

(Mr. Flynn) I think that the jury should know that these cases in Philadelphia grew out of the same subject matter that they have here that the man was prosecuted up there, was indicted and tried on a subornation of perjury, and none of these particular people were on the same subject matter.

(The Court) But didn't the Government dismiss that? What happened was that the Government and the judge agreed to accept the plea.

(Mr. Pierson) The Government didn't. They wanted to go ahead with it.

(The Court) Well, the Government asquiesced.

(Mr. Pierson) Yes.

(The Court) Well, of course what happened in that case has no bearing on this case and you say I should tell the jury it was the same proceeding. You pointed that out at the time the evidence was offered, and I think you argued persecution there into your closing arguments.

If I call attention to the fact that it was the same proceeding without saying that it had nothing to do with the case it would certainly tend to give color to your argument that there was something wrong about the second prosecution, as to which there is no evidence, and if I do do it, and tell them that it arises out of the same thing but it is no bar to this case and they should not consider it as any bar to this case, that is a legal question which I have decided, and can only be reversed by the Court of Appeals.

That's what I said the first time at your request before I knew that you were going to bring in later on yourself that question.

(Mr. Flynn) I had to bring it in when he took the stand, but the point I am making is not so much on the conspiracy situation. There were three cases of subornation of perjury which this man was indicted for.

(Mr. Pierson) Not the same subject matter.

(Mr. Flynn) Not the same subject matter, and the Court told the United States Attorney he didn't have any case.

(The Court) But that's not in the evidence.

(Mr. Flynn) It's not in the evidence.

(The Court) The Government may not have proved a case against him in connection with those subornation proceedings but I have ruled at this time that the Government has proved a case legally sufficient to go to the jury in connection with these two cases, and if the Government fails to prove a case before, that's no reason why they can't do it here.

I will overrule your objection. I think there is nothing that could be said which would clarify that which would not confuse the jury further or be unfair to one side or the other.

(Thereupon, the jury returned to the courtroom at 1:10 o'clock p. m., after which the following occurred:)

(The Court) There will be no further instructions. You may retire.

(Thereupon, at 1:10 o'clock p. m., the jury left the courtroom to consider their verdict.)

(The jury returned to the courtroom at 2:15 o'clock p. m., after which the following occurred:)

(The Court) Members of the jury, you have sent out the following note:

"The jury requests a re-definition of the second count as to what is required to prove guilt or innocence."

"Does knowledge of how a witness will testify without actually having instructed him to so say make the defendant guilty?"

As I told you, there are two elements to the crime of subornation of perjury. There must be perjury in the first place. That is, the testimony of the witness suborned must be false, and it must be given wilfully by that witness, knowing it to be false.

So that, in the first place, the man who testified falsely must have known that he was testifying falsely when he did it. That is, in the second count, it is necessary to prove that Sitaras when he testified that Kostatos was John

George Sitaras and had been brought to Greece as a young boy and had been born in America, that he knew that it was not true.

That is the first element, the element of perjury.

The second element is that there must be subornation of perjury; that is, that the defendant must have caused or induced or instigated the perjury.

Now, as to what that means, it certainly means that the defendant must have known or believed that the testimony which the witness was about to give would be untrue, would be false, and he must know or believe that the witness knew it would be false and intended him to testify falsely.

Now, to come specifically to the two questions that you have asked, does knowledge of how the witness will testify make the defendant guilty? I will read the whole question.

"Does knowledge of how a witness will testify without actually having instructed him to so say make the defendant guilty?"

Now, let me break it down. Knowledge of how the witness will testify does not make a defendant guilty. On the other hand, a defendant may be guilty without having instructed the witness what to say.

A lawyer may be guilty of subornation of perjury even though he has not instructed the witness to say so if he knows that the testimony the witness is going to give is false and if he knows that the witness knows that it is false and yet he causes or induces the witness to do it and puts the witness on the stand, and the witness does so testify; then the defendant may be guilty.

But mere knowledge of how the witness will testify is not of itself sufficient to make him guilty. He must, within the language I gave you, cause or induce.

Is that clear?

That is, mere knowledge of how the witness will testify is not enough. On the other hand, the Government does not have to prove that he instructed him how he should testify.

It is enough if the lawyer, the defendant, in this case, knows that the testimony that the witness is going to give is not true and knows that the witness knows it, and still puts him on the stand to give it and causes and induces him to do it.

Now, I don't know whether you want me to add here that the first part of the perjury must be proved by two witnesses or by one witness and corroborating circumstances; but the second part, the suborning, does not have such an elaborate requirement. Although, of course, you must be convinced of all elements of the case beyond a reasonable doubt.

(Mr. Flynn) If Your Honor please, we except to that charge for the reasons that I explained to Your Honor at the Bench, as I understand the law.

(The Court) I want you to express it exactly.

(Mr. Flynn) I understand.

(The Court) I thought I had given the charge the way you want it.

(Mr. Flynn) I mean the answer to the Foreman's question, I feel it should be, that it is only subornation of perjury when the person who is charged with subornation of perjury causes, induces or instructs the person to so testify.

Mere knowing that the person has testified or would testify unlawfully or commit perjury is not subornation of perjury.

(The Court) I thought that was pretty nearly what I said, Mr. Flynn. I said that mere knowledge is not enough but it didn't require that they prove "instructed"; that the causing or inducing him to do it are just as sufficient as instructing.

(Mr. Flynn) Well, that's my exception, sir.

(The Court) The record will speak for itself.

All right.

(Thereupon, at 3.38 o'clock p. m., the jury retired to consider their verdict.)

DOCKET ENTRIES

In the United States District Court
for the District of Maryland.

No. 23739 Criminal Docket

United States Of America
vs.
George P. Petite

1956

Aug. 21—Indictment for Vio. U. S. C., Title 18, Sec. 1622, filed. (Subornation of Perjury).

Aug. 21—Request of U. S. Attorney to issue Bench Warrant, Recommendation as to Bail, and Order (Thomsen, C. J.) thereon, filed.

Aug. 21—Bench Warrant issued. (Cepi in Jail — 21st August, 1956).

Aug. 22—Recognizance, filed.

Aug. 22—Appearance of Bernard J. Flynn, Esq., on behalf of Defendant, Order, filed.

Aug. 29—Defendant's Motion to Dismiss Indictment, filed.

Oct. 16—Appearance of Louis R. Milio, Esquire, on behalf of Defendant, filed.

Oct. 19—Hearing on Motion of Defendant to Dismiss Indictment before Thomsen, C. J.

Oct. 19—Argued — Briefs to be filed and further argument to be heard, if necessary, at a later date.

1957

Jan. 17—Opinion and Order (Thomsen, C. J.) denying Defendant's Motion to Dismiss, fd.

Jan. 30—Motion of Defendant for Discovery and Inspection, filed.

Feb. 1—Defendant arraigned and plead "Not Guilty".

Apr. 26—Hearing on Motion of Defendant for Discovery and Inspection, before Thomsen, C. J.

1958

Apr. 28—Subpoenaes (4) on behalf of United States issued.

Apr. 29—Subpoena on behalf of United States issued.

Apr. 30—Subpoenaes (3) on behalf of United States issued.

May 5—Jury empannelled and sworn before Thomsen, C. J.

May 5—Not concluded.

May 6—Praecipe for Subpoena to issue on behalf of Defendant, filed.

May 6—At the end of the Government's evidence in chief, Defendant moved for a Judgment of Acquittal which the Court "denied" without prejudice.

May 6—Not concluded.

May 7—Not concluded.

May 8—Defendant orally renewed Motion for Judgment of Acquittal at conclusion of all testimony — Motion "denied" by the Court.

May 8—Government's (3) Prayers filed.

May 8—Argument of Counsel.

May 8—Bailiff sworn.

May 8—Verdict: "Guilty" as to each of the 1st and 2nd counts of the Indictment.

May 8—On Oral Motion Defendant leave granted by the Court to suspend sentence pending the filing and disposition of a Motion for New Trial — Defendant to be released on bail in the amount of $1,000.00.

May 8—Recognizance pending filing and disposition of Motion for New Trial, filed.

May 9—Motion of Defendant for a New Trial, filed.

May 29—Hearing on Defendant's Motion for New Trial before Thomsen, C. J.

May 29—Order of Court (Thomsen, C. J.) overruling Defendant's Motion for New Trial, filed.

May 29—Judgment: That the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) months and to pay costs of case. Order (Thomsen, C. J.) filed.

May 29—An oral Motion of Defendant, the Court granted leave to release defendant on his own recognizance pending disposition of case on appeal.

June 6—Defendant's Notice of Appeal, filed. (Service of copy admitted).

July 3—Petition of Defendant and Order of Court (Thomsen, C. J.) extending time for filing the Record and docketing the Appeal herein to and including September 4, 1958, filed.

July 7—Joint Designation as to contents of Record on Appeal, filed.

Aug. 19—Transcripts of Proceedings (4 volumes) before the Court on May 5, 1958; May 6, 1958; May 7, 1958; and May 8, 1958, filed. (Filed separately).

APPENDIX

APPENDIX TO APPELLEE'S BRIEF NO. 7694

(St. Tr. 165-177):

MIKE SITARAS,

was called as a witness for and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your full name.

(The Witness) Mike Sitaras.

(The Clerk) S-i-t-a-r-a-s?

(The Witness) That's right.

(The Clerk) Keep your voice up and talk loud so the jury can hear you.

DIRECT EXAMINATION

By Mr. Pierson:

Q. Mr. Sitaras, where do you live? A. In Wilmington, Delaware.

(The Clerk) Keep your voice up, Mr. Sitaras.

(The Witness) In Wilmington, Delaware.

Q. (Mr. Pierson) And at what street address? A At the present is 1306 Lovering Avenue.

And at this time was 11 East Friend Street.

Q. Mr. Sitaras, how old are you? A. Fifty-five years old, I will be fifty-five August 15th.

Q. This coming August you will be fifty-five? A. Correct.

Q. Do you know the defendant, Mr. George Petite? A. Yes, I do.

Q. How long have you known him? A. I know George Petite ever since around 1917 or '18 somewhere, just used to be a partner, used to be a partner in business.

Q. Of yours? A. Yes.

Q. Where? A. In Chester.

Q. In Chester? A. Yes.

Q. Would you keep your voice up so the members of the jury can hear you?

What business were you in? A. Confectionery.

Q. How long were you in partnership with Mr. Petite? A. We were about seven or eight years, second floor building.

(The Court) Can you get him to speak louder.

Q. (Mr. Pierson) Can you speak louder?

(The Court) The Reporter can't hear him, I can't hear him and the jury can't hear him.

Q. (Mr. Pierson) Can you speak a little louder, please? A. Okay.

Q. Well, you were in partners with him? A. Yes.

Q. In the confectionery business in Chester? A. Yes.

Q. Chester, Pennsylvania? A. Yes, Edmond Avenue.

Q. And I think you said for seven or eight years? A. No, seven or eight months.

Q. Seven or eight months? A. Yes.

Q. Were you married at the time? A. At that time I was married, yes.

Q. Where did you live then? Do you recall? A. I had been living in — let's see now exactly—

Q. Well, if you don't remember, it's all right.

Did you live near Mr. Petite? A. Yes, I did, in effect, he used to live in my sister's house at that time.

Q. You both lived in your sister's house? A. Yes.

Q. And I suppose you were quite friendly? A. Yes.

Q. How many brothers did you have, Mr. Sitaras? A. How many?

Q. How many brothers did you have? A. How many brothers?

Q. Yes. A. Three.

Q. And what were their names? A. George, Gus, and Mike.

(Mr. Flynn) Mike? Well, you're Mike, aren't you?

(The Witness) Yes.

(Mr. Flynn) Aren't you Mike?

(The Witness) Yes. I had three brothers in this country.

(The Court) Can the jury hear the witness?

Bring his chair down in front of the jury.

Q. (Mr. Pierson) Now, you had three brothers? A. Three brothers, yes, three brothers.

Q. Was George older or younger than you? A. George was older.

Q. George was the oldest? A. Yes.

Q. Where did George live when you and Mr. Petite were in partnership? A. He used to live in Chester also, the same village, I don't remember exactly.

Q. What? A. I don't remember the name of the street, but he used to live in the same — in Sun Village.

Q. Sun Village? A. Yes.

Q. That was in Chester? A. Yes.

(The Court) Can the jury hear him now?

Q. (Mr. Pierson) How far away from you, from your sister's house where Mr. Petite lived? A. Two or three blocks apart.

Q. You and your brother? A. Yes.

Q. Have you seen Mr. Petite from time to time? A. Yes.

Q. Since you dissolved the partnership? A. Yes.

Q. Your brother George, is he living or is he deceased? A. My brother George died.

Q. When? A. About—

Q. What? A. About seven or eight years now.

Q. How many children did your brother George have? A. How many children?

Q. Yes. A. Three.

Q. What were their names? A. One is Gus; the other is John.

Q. John? A. That's right, and Ann.

Q. Did John have a middle name? A. John have a middle name?

Q. Yes? A. He had his father's name.

Q. John George? A. John George Sitaras.

Q. And that is your nephew? A. Yes, that's right.

Q. Did your nephew live? A. No, sir.

Q. When did he die? Do you know? A. He died between 1929 or 1931 — somewhere in there — '28.

Q. Somewhere in there, a long time ago. Do you know this man that was on the witness-stand yesterday when you were in Court?

(The Court) Let him stand up.

(Mr. Pierson) Would you stand up, Mr. Kostatos?

Q. (Mr. Pierson) Do you know this man? A. I do know him before.

Q. Before what? A. '51 or '52 or sometime, John George, he brought him over, George brought him over.

Q. George brought him over, George Petite brought this man over? And do you know about what month it was? A. No, I don't recall exactly.

Q. Do you know what season of the year it was? A. It was in the fall, somewhere around the fall.

Q. 1951 or 1952? A. Yes.

Q. What was said at that time? A. The first time we had drinks.

(Mr. Flynn) If Your Honor please, I want to object to this testimony. This man is assuming to testify about a conversation taking place somewhere around 1951 or 1952, and I don't know whether Mr. Petite was there the whole time or whether it was a conversation between Mr. Petite and this man or who, and I object to it.

Q. (Mr. Pierson) Just tell us what conversations were had there between you and Mr. Petite or between you and this young man when you and Mr. Petite were present. A. I had no conversation with George Sitaras there at all. I had just some with George Petite.

Q. No conversation with this man? A. No.

Q. What was your conversation? A. Just shook hands.

Q. What was your conversation with Mr. George Petite? A. Well, he come up and the conversation was, George asked me if he could use my brother's son's name.

(The Court) Will you stand up and tell us what Mr. Petite said?

Q. (Mr. Pierson) What did he say? A. Mr. Petite said if I can have the use of my brother's son's name for this young man here. Is that clear?

Q. What did you say? A. I said, "No, that's the trouble. I don't want to get in trouble."

Q. Was there any other conversation after that? A. We had no conversation, I came to Philadelphia to the Court.

Q. Was there anything said about your nephew about where he was or anything like that? A. No questions because he knew the boy was dead.

Q. The boy was dead at the time? A. Yes, and we didn't bring any question about it.

Q. Was anything said by you? A. No.

Q. Other than what you just told us? A. Just plain words; that's all.

Q. Did you ever hear anyone say this young man here claimed to be John George Sitaras? A. No, sir.

(Mr. Pierson) Witness with you.

CROSS EXAMINATION

By Mr. Flynn:

Q. Mr. Sitaras, where did this conversation take place? A. In 2205 Marcus Street, Wilmington, Delaware.

Q. And that's all that happened? A. That's all, just one night.

Q. This man came there and said can this man have your son's name? A. Yes.

Q. Your nephew's name? A. Yes.

Q. That's all, and you never talked to him before or since? A. Never.

Q. Now, when you and he were in partners, that was in 1917, how often did you see him between that time in 1917, and did you say in 1951? A. George?

Q. Yes. A. I saw him often before.

Q. Often before? Where? A. He used to come down. I saw him different times, parties we had down in Baltimore.

Q. And that is all that was said at this time, can this young man use your nephew's name? A. Yes.

Q. And nothing else was said? A. No, never had troubles before.

(Mr. Flynn) That is all.

REDIRECT EXAMINATION

By Mr. Pierson:

Q. What was that? A. Never had troubles before.

Q. When you say you never had troubles before, whom did you mean? A. George Petite.

Q. You never had trouble with him before? A. No.

(Mr. Flynn) Now, wait a minute. I don't think he said that. He said he never had any trouble before. Then he said George Petite, now what was that.

Q. (Mr. Pierson) George Petite never had trouble before? A. With me, with me, I mean. I didn't have any harm against him. Is that clear?

Q. You didn't have any harm against him and he never had any harm against you? A. No.

Q. And you also said that you wouldn't do it; is that right? A. I refused.

(Mr. Pierson) All right.

RECROSS EXAMINATION

By Mr. Flynn:

Q. When did you say this was? This was in 1951? A. Yes, somewhere.

Q. Somewhere? About what time in '51? A. I can't give you the exact date.

Q. Was it in the wintertime, or near Christmas? A. It was in the fall.

Q. In the fall? A. Yes.

Q. He didn't tell you anything about this boy, anything at all, merely said could this boy use your nephew's name? A. Yes.

(Mr. Flynn) That's all.

By Mr. Pierson:

Q. Did he tell you what his name was? Did he tell you what this young man's name was? A. Yes, he did.

Q. And what was it? A. George Kostatos.

(Mr. Pierson) That's all.

(Mr. Flynn) Just one more question.

By Mr. Flynn:

Q. Didn't this happen in 1953 and not 1951? A. I said I can't recall the exact date.

Q. Are you sure about the year? A. No, sir.

By Mr. Pierson:

Q. You thought it was '51 or '52? A. Yes.

* * * * * *

(St. Tr. 251-257):

NICOLAOS JOHN MOSKONAS,

was called as a witness for and on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your full name.

(The Witness) Nicolaos John Moskonas.

(The Clerk) Spell your name.

(The Witness) N-i-c-o-l-a-o-s John M-o-s-k-o-n-a-s.

DIRECT EXAMINATION

By Mr. Flynn:

Q. What is your address, sir, please? A. My address is 1901 West Pratt.

Q. West Pratt? A. Yes.

Q. And what do you do? A. I do restaurant work, operate a restaurant with my father.

Q. With your father? A. Yes.

Q. A restaurant in the same address? A. Yes.

Q. Now, were you ever employed at a restaurant at Roland Avenue and 40th Street? A. Yes.

Q. What was the name of that restaurant? A. The New Times Inn.

Q. What? A. New Times Inn.

Q. New Times Inn. Who owned and operated that restaurant? A. Mr. Nicholas and Harry Frankos, brothers.

Q. Were you employed there in the month of October 1951? A. Yes, sir.

Q. And what was your work? What did you do? A. I was doing, working as a grill man and waiter.

Q. Grillman and waiter? A. Yes, at the same time.

Q. Do you know a man by the name of John Sitaras? A. John George Sitaras, yes.

Q. When did you first see John George — by the way, is he in the courtroom? Do you see him in the courtroom? A. Yes, right there (indicating).

Q. The man back there with the light suit on? A. That's the one.

Q. Now, when did you first meet him? A. I met him October 1951.

Q. Where did you meet him? A. He was — I met him up in the place where I was working.

Q. At the New Times Inn? A. Yes.

Q. Now, can you tell the Court and the ladies and gentlemen of the jury just what was the occasion and under what circumstances did you meet him? A. Okay. There was an old man that worked, owned a restaurant down 36th Street and Roland Avenue.

Q. What was his name? A. His name was Flaros, F-l-a-r-o-s.

He brought this young man up there, and he called me outside, and he said, "Nick, come over here, I want to talk to you."

He said, "Here's a young man, he wants a job, to give him a job. Can you talk to your boss?"

I said, "Why don't you put him in your place?" And he explains because of his new system of decorating down on 36th Street.

I asked him why don't he put him in his restaurant, and he told me, well, he's got relatives of his, and they need the job very badly, and his relatives were working there, and he wants to get him a job where I was working.

Okay. After that I talked to Mr. Frankos and he told me he will see about it.

Now, we talk it over with this young man, and his next problem will be a room.

I said, "I know a lady. She is a customer of mine, and she comes over, and I know her well, and I am going down to 30th Street and talk to her and see what we cannot do," and he told me "I am going with you."

Q. Just a minute. Can I have those receipts, please? All right, now, go ahead. A. Okay. I went to 805 West 36th about half a block where the lady was living, and the reason I went down there was if I could find anybody, she needs the money very badly and I took him over there and she

has a room to rent, and that was the reason I took him up there.

All right. I talked to her, and she asked me how long do I know him, and I said not too long, it's about two hours I met him, but he looks a nice boy.

She said, "Well, would it be all right if I call Dr. Kovakos, 36th and Roland Avenue to see whether a recommendation he is going to give him."

I said, "Of course", and we stop off at Kovakos' Drug Store, and he met him, so he told us, he guesses it's all right. So she gave us the room, and he paid in advance, he gave me twenty-eight dollars altogether, and I paid seven dollars, and I hold the rest. The reason—

Q. You say you paid how much? A. Seven dollars.

Q. Seven dollars? A. Yes.

Q. At one time? You said something about twenty-eight dollars. A. I paid in advance and I kept the rest. The reason he gave me the money was because he could not speak English, and I asked whether it was four dollars or not, and he give me the money for the whole month, and I told him four times seven is twenty-eight.

All right. He gave the money. I paid in advance, and she gave me a receipt, Christine Keener. I don't remember the last name. However, it was a check.

Q. Well, did you pay the full twenty-eight dollars to her at one time or did you pay— A. No, sir.

Q. Or seven dollars? A. Seven dollars at a time.

Q. And you got a receipt from her each time? A. Yes.

Q. Now, I want to show you this receipt which is dated October 13, 1951. A. Yes.

Q. And I will ask you whether or not that is the receipt that you had received from this lady for this rent. A. Yes.

Q. On that date? A. Yes.

Q. Now, when did you pay the other three? A. The other three was, the Immigration called—

Q. What? A. The Immigration called, and I figured as long as I had the money, I went down there and told him it was right and told the lady to hold up his room, and I told her.

Q. Just a minute. What is that? You told her what? A. When I paid the receipts.

(The Court) What? I didn't understand.

Q. (Mr. Flynn) When you got the receipt? When you got the first receipt? A. When I got the first receipt, that's right, when I paid the lady for the rent. At the same time I don't remember exactly how long after it was thereafter I was in my home when Mr. Flaros, I met him, and he said, "You know", he said, "they got John, the Immigration Office got John."

I said, "Well, I better go ahead and pay the receipts and hold his room."

Q. When you say pay the receipts, you mean pay the rent? A. Pay the rent. I'm mixed up.

Q. Go ahead. A. Pay the rent and get the receipts.

Okay. I kept it, paid the receipts. All right. When he got out he went to work.

Q. Let me stop you there a minute. You say when he got out, what do you mean? What do you mean he got out from where? A. From the Immigration Office.

Q. You mean the Immigration had picked him up and when he got out from the Immigration Office, then you saw him again? A. Yes, I saw him again and we were working together on 40th and Roland Avenue.

* * * * * *

(St. Tr. 259-261):

Q. Now, let me ask you this question: When did you pay the money for which you got the three receipts here? That is, this is dated October 20th, October 27th and Sep-

tember the 3d. When did you pay those three amounts to this lady? A. I pay her every week.

Q. Every week? A. Yes. The money, now, I only pay her four times.

Q. Now, was he staying at that place all during that period? A. Until I left, that's right.

(Mr. Flynn) If Your Honor please, I would like to offer these in evidence.

(The Witness) I want to say something else.

(Mr. Flynn) Now, wait a minute.

(The Court) Go ahead.

(Mr. Flynn) If Your Honor please, I would like to offer these in evidence now.

(The Court) All right.

(The Clerk) Marked Defendant's Exhibit No. 1.

(Rental Receipts were marked Defendant's Exhibit No. 1.)

Q. (Mr. Flynn) Now, up to the time, as you testified, after you went into the Water Department and in the service, you never had any more contact with him? A. No, I was in the Korean War, I was in the service. I didn't see him.

Q. Did you ever have any social contact with him? A. No, sir. As far as I was concerned when I came out from the service, I found out from the place we were working together, worked in Chester, Pennsylvania, and that was all the information I found out.

Q. Now, while he was working with you, did he ever discuss his background? And I mean by that did he ever tell you where he was born? A. He told me he was born in Chester, Pennsylvania, and he came back in the United States, he went to Europe when he was a little baby, and he came back to find for his rights, to ask for his rights.

(The Court) To ask for his rights?

(The Witness) To ask for his rights, as I mean, to get his naturalization papers.

Q. (Mr. Flynn) Was there anything else he told you about himself in these conversations? A. The only time he was talking to me was a couple of times we went to a Greek dance, and as a young man I was having a couple of beers and he was having a couple of beers, and he was telling me a lot of times, "Some day you will see how smart I am."

And when I got out from the service, which was November or September or December, I don't exactly remember when my—

Q. What year? A. It was 1955, when I got out from the service, my father, he told me Mr. Petite got in trouble, and that got me suspicious because he used to tell me.

* * * * * *

(St. Tr. 261-265):

Q. (Mr. Flynn) Did you, after you got out of the service, did you hear anything about Mr. Petite? A. Yes.

Q. What did you do because of this information that you obtained about Mr. Petite, if anything? A. What did I do?

Q. Yes. A. Well, when I heard he was in trouble, I tried to see what was the matter, and I asked, I found out the whole story, which everybody knows who are here, and accidentally as I was looking over my papers in my suitcase, I found those receipts, and I was holding them in my pocket until the day came, and I—

Q. Just a minute. I don't understand that.

(The Court) He said—

(The Witness) I was holding the receipts in my pocket until the day came and I gave them to you people.

Q. (Mr. Flynn) Gave them to me? A. Yes. That's all I have to say. I gave them to Mr. Flynn.

Q. You had them in your possession from the time you received them? A. That's correct.

Q. Until you turned them over to me? A. That's right.

(The Court) And you say you received them in 1951?

(The Witness) 1951, 13 of October.

(The Court) And kept them in your possession the whole time?

(The Witness) Yes, sir.

(The Court) Until you heard of this and then turned them over to Mr. Flynn.

(The Witness) That's right.

(The Court) No doubt about it?

(The Witness) No doubt about it.

(Mr. Flynn) The witness is with you.

CROSS EXAMINATION

By Mr. Pierson:

Q. These papers, these receipts never left your possession, is that right, until you gave them to Mr. Flynn?

(Mr. Flynn) Oh, no.

A. From the day that I was in, the day I was in, when was it, Mr. Flynn, that the lawyers — of course, my English is very poor.

Q. (Mr. Pierson) Was this a month or two ago, a couple of months ago?

(Mr. Flynn) Just a minute.

(Mr. Pierson) Let me question the witness.

(The Court) Mr. Pierson has the witness.

Q. (Mr. Pierson) Did you have them in your pocket until a month ago or two months ago? A. Until, it's been over two months.

Q. Over two months? A. Yes.

Q. Three months? A. I don't remember.

Q. Six months? A. When was it Mr. Petite had an investigation, Mr. Flynn?

(Mr. Flynn) When was it?

(The Witness) I don't remember.

Q. (Mr. Pierson) Until the day you gave them to Mr. Flynn, you kept them yourself? A. That's right.

Q. That's right. A. He gave them to me back and I kept them.

Q. Gave them to you back. A. I gave them to him.

Q. When? A. To Mr. Flynn, at the day that everybody was in the—

Q. Before you gave them to Mr. Flynn, you kept them; is that right? A. Right, yes, sir.

Q. You never gave them to Mr. Petite? A. No, sir.

Q. You never did? A. Never did.

Q. Can you tell me why it was mounted on a piece of paper like this? A. What?

Q. Why are they stuck to a piece of paper like this? A. Because I always kept my stuff like that.

Q. You do? A. Yes, sir.

Q. In other words, you got these four reeeipts, and after you got them, you stuck them on a piece of paper? A. Yes.

Q. Did you stick them on one at a time as you got them or did you wait until you get all four? A. I had a piece of paper.

Q. What? A. I had a piece of paper, I got the piece of paper, in other words, as I would get them, I was putting them in, just kept going down.

Q. In other words, you had this piece of brown paper? A. Yes.

Q. And when you got a receipt that belonged to Kostatos you pasted it on here? A. Yes.

Q. And then when you got another one, you pasted it on there? A. Just so.

Q. And down here until you got to the end of the piece of paper? A. Yes.

* * * * * *

(St. Tr. 266-273):

Q. (Mr. Pierson) Is there any writing on the back of these? A. I don't remember.

Q. You don't remember.

These have not been altered in any way since you got them, and this lady wrote this just this way? A. Yes.

(Mr. Pierson) Will Your Honor indulge me just a minute?

There is something on the back of these.

Q. (Mr. Pierson) Doesn't it appear to you that this "51" on here has been altered? A. This 51?

Q. 51, yes. There has been no change in that since you got it? A. No, sir.

(Mr. Pierson) I ask the Court's permission to take these off and see what is on there.

(The Court) You better be careful in taking it off.

(Mr. Flynn) If Your Honor please, if these are going to be examined for any flaws in them, they should be examined by someone who knows what they are doing, and if Mr. Pierson doesn't know what he is doing, himself—

(The Court) I think that's right.

Can they be examined overnight?

(Mr. Pierson) They may be examined overnight.

(The Court) Mr. Flynn, would you like to go along in the examination?

(Mr. Flynn) No, sir, as long as a reputable person is to examine them, I have no fear about it. I don't have to be there.

Q. (Mr. Pierson) And when you gave them to Mr. Flynn they were pasted on this piece of paper just like that? A. Yes.

Q. And that piece of paper hasn't been altered except to put those things on there since you got them; is that right? A. I don't know if it is an address, you know, and I can show you, I can show you everybody, I got so many pieces of paper in my pocket has got writing, has addresses and everything, and I don't remember what's behind that.

However, you can examine it any day. I don't care.

Q. How long did you work at the New Times Restaurant or Inn? A. I beg your pardon.

Q. How long did you work at the New Times Restaurant? A. How long have I worked?

Q. Before this man came there? A. I would say about a year.

Q. And you were friendly with the people? A. Yes, because I worked in the other store in Preston and Greenmount Avenue.

Q. They had a store there too? A. They sold it.

Q. They sold it? A. Yes.

Q. You had worked for them? A. Yes.

Q. For how long? A. I worked for quite a while; maybe over a year.

Q. And do you know Mr. George Petite? A. Yes.

Q. Did you know him before that? A. Before when?

Q. Before you went to this restaurant at Preston Street to work? A. I met him in the church a lot of times, yes.

Q. You have known him for many years? A. I know him from, I know George, George Petite from the time I came to the United States.

Q. Which was when? A. Since 1947.

Q. Since 1947? A. '47.

Q. Did your family come with you? A. Yes.

Q. You say you are now in business with your father? A. That's right.

Q. Has Mr. Petite been your father's lawyer since you came to this country? A. As far as I am concerned, yes.

Q. These people whom you worked for, one of them was a brother-in-law of Mr. Petite? A. No, these two brothers, Mr. Nicholas and Harry Frankos, and one of them is Mr. Petite's—

Q. Is one of them Nick Frankos, and is that "gos" or "kos"? A. —kos.

Q. Mr. Nick Frankos? A. Yes.

Q. And is his wife a sister of Mr. Petite? A. A sister of Mr. Petite.

Q. And you knew that? A. Sir?

Q. You have known that right along? A. Of course, I was working there.

Q. And you knew that Mr. Petite represented this man whom you referred to as Sitaras in connection with the troubles before the Immigration authority? A. No, this I found out after I got out from the service.

Q. When did you go into the service? A. In 1953.

Q. '53? A. Right.

Q. Up to that time you didn't know anything about it? A. No, sir.

Q. Were you in this place on Roland Avenue when this man was picked up by the Immigration Service? A. No, I wasn't in the place.

Q. You weren't there? A. No.

Q. You knew it happened? A. Sir?

Q. You knew it happened? A. I knew it happened after the man told me because it's right in my neighborhood.

Q. And it happened before the second week's rent became due, is that right? A. It happened the same day I took these receipts down 805 West 36th Street. It happened about three or four hours later.

Q. The first receipt? A. Yes, the 13th of October.

Q. In other word the day you got the receipts and took the money down, the first seven dollars, the Immigration took him? A. I said goodbye to him. I left him in the place and I went down to my house, and I lived down there at that time, and when I came back about five or six hours later, they told me they picked John up.

Q. And that's the day you paid the first seven dollars? A. Yes, right.

(Mr. Pierson) That's all.

REDIRECT EXAMINATION

By Mr. Flynn:

Q. Now, Mr. Moskonas— A. Yes.

Q: —are you absolutely sure about that? A. Positive.

Q. That on the 13th he was picked up? A. Positive, on October the 13th.

Q. October 13th? A. I said the old man told me, he did tell me, he said that John was picked up.

(The Court) What he testified to, as I understand it, Mr. Flynn, he didn't give the date October 13th. He said that Kostatos, Sitaras, or whatever his name was, was arrested the same day that he paid the first seven dollars. That is what he has just testified to, but he hasn't said

what date it was. I made a careful note of that and I don't remember that he ever fixed it as a particular day. He said October 1951, but I don't remember that he ever gave the date.

(The Witness) Anyway, I didn't see him, when I come in, and the old man told me they picked him up, I dropped over to his room, and the first thing I asked the lady, Miss Christine, "Is John here?"

She said, "No, he's gone."

Now, I don't know what happened to him.

Q. (Mr. Pierson) He was gone? A. He was gone, and when I saw him later, I don't know was ten days or was fifteen days later, I don't exactly remember, he told me the Immigration caught him.

Well, I told him, I did pay your second receipt, and you don't have to worry about it.

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(St. Tr. 275-285):

HARRY D. FRANKOS,

was called as a witness for and on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

(The Clerk) Would you state your full name?

(The Witness) Harry D. Frankos, F-r-a-n-k-o-s.

(The Clerk) Harry D. Frankos. Keep your voice up loud and clear, Mr. Frankos, and face the jury when you answer questions.

(The Witness) Yes.

DIRECT EXAMINATION

By Mr. Flynn:

Q. Mr. Frankos, what is your address? A. My home or my business?

Q. Your home. A. 3614 Greenmount Avenue.

Q. And what business are you in? A. In the restaurant business.

Q. And where is your restaurant? A. 40th and Roland Avenue.

Q. 40th and Roland Avenue? A. Right.

Q. Did you have that restaurant in the year 1951? A. Yes.

Q. Do you still have that restaurant? A. Right.

Q. Anyone else in business with you? A. My brother.

Q. Now, the young man that was on the stand who just testified and left the stand, was he ever employed by you? A. Yes.

Q. Do you know what year he was employed by you? A. Well, he was working over the other store for a couple of years, and then when I opened the place on Roland Avenue, he came in and worked about a year in that store.

Q. What year was that? A. That's '51.

Q. '51? A. Yes.

Q. When did he leave you? A. When he went in the Army. I don't know when he went in the Army. From my place he went in the Army.

(The Court) You say he only worked for you about a year?

(The Witness) What?

(The Court) You say he worked for you only about a year?

(The Witness) Only the new store; two years in the other store. Three years altogether.

(The Court) What was the last year he worked for you?

(The Witness) What is it?

(The Court) What was the last year he worked for you?

(The Witness) That's '51, 1951.

(The Court) And he left you to go in the Army?

(The Witness) What?

(The Court) You say he left you to go in the Army?

(The Witness) That's right.

(The Court) I thought he had said he went in the Army in 1953.

(Mr. Flynn) He said also that he left him to go with the Water Department and went into the Army from the Water Department.

Q. (Mr. Flynn) Now, are you clear about that or not? Do you know what he did after? A. Well, I know he worked for the Water Department, but I don't know whether it was after he got out of the Army or before. I know he worked for the Water Department.

You see, he worked three times he worked for me three times, and when he come back from the Army, he worked there again, and I think then he went to the Water Department.

Q. Now, do you know John Sitaras? A. Yes.

Q. Do you see him in the courtroom? A. Yes.

Q. Will you point him out? A. There (indicating).

Q. The man sitting back there? A. Yes.

Q. Did he ever work for you? A. Yes.

Q. When did he work for you? A. Well, it was in the middle of October 1951.

Q. Well, now, can you tell the Court and the members of the jury in your own way how he came to come to you

and why you gave him a position? A. Well, a friend of mine that got a restaurant on 36th Street, Flaros is his name; he came in and asked me if I need help.

I said, "No, I don't need no help right now."

But then he started to explain to me that it was a fellow just come off the ship and he needs a job bad.

I told him, why don't you put him in your store.

He said, "I'm filled up."

Q. Just keep your voice up. A. Yes. He said, "I'm filled up."

So I told him if I need somebody, I'll call him.

After a couple of days, I was short of a dishwasher and I called him, and he sent John to me.

I think he worked a couple of days, and the Immigration Board come in and they arrested him.

Q. Were you there when he was arrested? A. Yes.

Q. In the store? A. Yes, I was.

Q. Now, did you go with him? A. I did.

Q. To the Immigration Office? Where did you go? A. Well, I asked him where he lives, and he took a card from his pocket, and he said he lives on Northern Parkway. I mean the address on the card was the address on Northern Parkway.

Q. Well, did you go to Northern Parkway? A. We went there with the Immigration officials, and was nobody at the house. So then they took me back to my restaurant and they took John to the Immigration.

Q. Did you ever discuss with him anything about his place of birth? A. Not, I mean in the beginning. Later on we discussed about it.

Q. What? I don't understand. A. Not in the beginning. I don't know, I mean the first couple of days.

Q. Did he at any time talk to you about it? A. Oh, yes.

Q. Tell the Court and jury what he told you about where he was born. A. Well, he told me that he was born in Chester, Pennsylvania, that he went back to the Old Country when he was a kid, and now he is married and got two children.

He come over here, he said, to bring his children back to the United States, and I just happened to have an incident like that with my brother-in-law, and he was, my wife's sister had two brothers, and one of them served in the Greek Army, and they won't let him come over here, the rest of them come over here, and in fact, the United States Government asked them to come over here, and everybody come here except one of them because he served in the Greek Army they won't let him come in.

And they told me if he can get a ship and get off anywhere in the United States, it would be all right, which he choose to wait—

(Mr. Pierson) Your Honor, I object to this.

(The Court) Well, this is a story about his brother, I don't think it has anything to do with this case.

(The Witness) Well, that's why I thought—

(The Court) Strike it out.

(The Witness) To have him work for—

(Mr. Flynn) Just a minute.

(The Court) Ask another question.

Q. (Mr. Flynn) Did you see him at any time after the Immigration authorities took him away from your store? A. He come right back and started working.

Q. How long after? A. He worked over seven months.

Q. How long was he gone when he was arrested? A. I don't know whether it was two days or three days, something like that.

Q. Anyhow, he did come back to your store? A. Yes, he came back when they let him out.

(Mr. Flynn) The witness is with you.

CROSS EXAMINATION

By Mr. Pierson:

Q. Mr. Frankos, he worked for you as a dishwasher? A. Yes.

Q. How long did he work for you? A. Well, altogether, you see, he worked for a while, and come back.

Q. He worked as a dishwasher? A. Yes.

Q. And worked six days a week? A. Yes.

Q. Sunday night? A. Yes — not Sunday. We close Sunday.

Q. You closed Sunday? A. Yes.

Q. That is not a tavern? A. What's that?

Q. That is not a tavern? A. No.

Q. A restaurant? A. Yes.

Q. Sort of a grill? A. Yes, open grill.

Q. Open grill? A. Yes.

Q. And this house that you speak of on Northern Parkway, is that Mr. Petite's mother-in-law's house? A. Yes.

Q. It is? A. Yes.

Q. So the address that he gave to the Immigration Inspectors was Petite's mother-in-law's house? A. That's right.

Q. And when you got there there was nobody home? A. That's right.

Q. It wasn't a vacant house? A. Well, it looks, it was because they put the place for sale.

Q. They wanted to sell it? A. They had the place for sale.

Q. And it was Mr. Petite's mother-in-law's house? A. Yes.

Q. And how he got that address, you wouldn't know? A. What is it?

Q. You don't know how he got that address, do you? A. Well, the way I understand, the way it happened, I didn't get it—

(Mr. Flynn) Well, do you know or don't know?

(The Witness) No.

Q. (Mr. Pierson) You didn't give it to him? A. Well, that's what I tried to bring out. Maybe he got it from the store because Mrs. Kosmides asked whether we can find somebody who can clean the yard and things like that around the house because to make the place presentable.

Q. To do some work around there? A. Yes, and we had it posted on the register in case somebody come up to give it to him was to work, we had the advertisement on the register.

Q. So you don't know? A. I don't know whether my brother give it to somebody, somebody works for me or somebody else.

Q. Or whether he ever worked there, for all you know? A. No, I don't.

(The Court) I understood the witness to testify on direct that when he came there to work he worked a couple of days before he was picked up and that he told the witness that he lived in Northern Parkway.

(Mr. Pierson) Yes.

(The Court) That he gave the witness the Northern Parkway address as where he lived.

Isn't that what you said on direct?

(The Witness) Yes.

Q. (Mr. Pierson) But when you went there with the Immigration people, there was nobody home? A. No.

Q. And it was Mrs. Kosmides? A. Kosmides, yes.

Q. And that is your brother's mother-in-law's name? A. Yes.

Q. And also the name of the same lady, Mr. Petite's mother-in-law? A. Yes.

(Mr. Pierson) That is all.

(Mr. Flynn) Wait a minute.

REDIRECT EXAMINATION

By Mr. Flynn:

Q. After this man was arrested did you find out what his real address was, where he was living? A. Yes.

Q. Where was he living? A. Somewhere on 36th Street.

* * * * * *

(St. Tr. 285-294):

MRS. VALENTINA KOSMIDES,

was called as a witness for and on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your full name.

(The Witness) Mrs. Valentina Kosmides.

(The Clerk) How do you spell Kosmides?

(The Witness) K-o-s-m-i-d-e-s.

(The Clerk) Take the stand, please. Mrs. Valentine Kosmides. Mrs. Kosmides, when you answer questions please speak out as loudly as you can.

(The Witness) Yes.

DIRECT EXAMINATION

By Mr. Flynn:

Q. Mrs. Kosmides, where do you live? A. I live in the Broadview now.

Q. Before you lived in the Broadview, where did you live? A. I was living Northern Parkway.

Q. Northern Parkway? A. 3814.

Q. 3814. A. Seven years — six years, six years ago.

Q. Six years ago? A. Yes.

Q. Now, I think you lived there until your husband died? A. Yes.

Q. When did your husband die? A. He died 1950, December 3rd.

Q. December 3rd, 1950? A. Isn't that right?

Q. That's all right.

(The Court) She may ask him.

Q. (Mr. Flynn) Now, after the death of your husband, did you move out of the Northern Parkway house? A. No, I didn't move right away; I didn't know what to do, and I decided to move in the Broadview Apartments, and I put up the house for sale, and the Broadview was to be ready by November.

It took longer, and I sold that house in August.

Q. In August? A. Yes.

Q. Now, before you get to that— A. In September, well, my daughter didn't want me to stay by myself at that house.

Q. Yes. A. She don't want me to stay all alone in that house in the fall, you know, wintertime.

Q. Just a minute. Your daughter is Mr. Petite's wife? A. Yes. I have another daughter.

Q. Wait a minute. You are his mother-in-law? A. Yes.

Q. Now, then, you say your daughter did not want you to stay in that house. What did you do? A. I went there and stayed with them.

Q. You went to Mr. Petite's house and stayed with him? A. Yes.

Q. Now, how long did you live with your daughter and Mr. Petite? A. Well, I lived all the time up until the time I went to the Broadview, January 17th.

Q. Up until January 17th, which was '50— A. '51 or '52, I don't remember — six years ago in January was.

Q. Now, while you were living in Mr. Petite's home, did you have any work done in the Northern Parkway house? A. Yes, I had someone working down there.

Q. Whom did you get to do the work? A. Well, I have John.

Q. John? A. John.

Q. John who? A. I don't know.

Q. The man who was on the stand before? A. Yes.

Q. This man back here (indicating)? A. Yes. I had him.

Q. He did the work? A. Yes.

Q. How did you get him to do the work? A. Through Harry Frankos.

Q. Through this man? A. I asked if they have somebody paint my chairs.

Q. Did you go out when he was working out there, did you go out with him? A. Yes.

Q. Did you drive him out or did you have somebody do it? A. I don't know how we met there. I don't remember exactly, but I was going daytime and going back at night.

Q. Did he ever live in Northern Parkway? A. Nobody lived there, no.

Q. After you left? A. Nobody lived there.

Q. Now, can you tell us approximately as best you can when you went to your daughter's home to live? A. Well, I don't know exactly, and I had most of the things in the house, and I guess that at times the boys went to college, and he went about the 15th of September, maybe the 20th of September, after the children they left, two of them.

Q. 1951? A. Yes, '51, — no, '51 — yes, I guess so.

Q. So that you went there and lived? A. Yes.

Q. There permanently? A. Yes.

Q. Until you went to the Broadview? A. Yes; I go to this house two or three times a week to see about what's happening.

Q. While you were living with your daughter and Mr. Petite, did you ever know of John living there with Mr. Petite and his family? A. No.

Q. You never saw him there? A. No.

Q. I call your attention to the fact that he has testified that for fifteen or twenty days, and during that period you were living there, you say you didn't see him? A. Nobody, the two boys was away in college.

Q. When you say the two boys, you mean Mr. Petite's sons? A. Except one.

(Mr. Flynn) Witness with you.

CROSS EXAMINATION

By Mr. Pierson:

Q. Mrs. Kosmides, when you lived with your son-in-law, Mr. Petite, who else was living in the house besides you? A. Nobody. Of course, Mr. Petite's house?

Q. Yes. A. Just his family, the children and me.

Q. The two children were away at college? A. Yes.

Q. And he has three boys? A. Three boys.

Q. So that you were living there? A. Yes.

Q. Mr. Petite was living there? A. Yes.

Q. And his wife was living there? A. Yes.

Q. And one boy? A. The youngest, Andrew.

Q. Andrew? A. Yes.

Q. What do you call him in Greek? What is his Greek name? A. Well, we call him Andrew, Andreos is his name.

Q. Andreos? A. Yes.

Q. And how many bedrooms are there in that house? Are there four bedrooms in that house? A. Yes, four.

Q. You were home in that house — where is that house? A. My son-in-law's house?

Q. Yes. A. It's 4611 — 4611.

Q. And you were there from the 17th or 20th or whatever it was when you moved there until you moved to the Broadview, you were home there most evenings, were you not? A. Well, I have another daughter going there too.

Q. And you would go there? A. Yes.

Q. But you were there most evenings? A. Yes, and go to the other house.

Q. But mostly you were there? A. Yes.

Q. During the time that you were there in Mr. Petite's house from September 15th or the 20th, 1951 until the time you moved to the Broadview, did you ever see this man out in that house, Kostatos, the man named John? A. No, we don't have no visitors.

Q. No visitors? A. I'm sorry.

Q. You never saw the man there? A. No.

Q. Now, you also said that you owned this house on Northern Parkway, No. 3814? A. That's right, but I don't any more.

Q. You sold it? A. Yes.

Q. And you wanted some work done out there? A. Yes.

Q. And you got this man to do it? A. Yes.

Q. Through Mr. Harry Frankos? A. Yes.

Q. In other words, you didn't know this man at all? A. No.

Q. And the way you got him, Harry Frankos recommended him to you? A. Yes, I asked if they had anybody come in the store do some painting for me.

Q. And he went out and did some painting? A. Yes, sir, they sent someone.

Q. Was he there more than one day? A. I think it was about three days, three afternoons.

Q. Would you pick him up and take him out there? A. I don't remember.

Q. You don't remember? A. Because I was worried at the time about selling my house.

Q. The only thing you remember was the way you got him through Mr. Frankos? A. Through Mr. Harry Frankos.

Q. Through him? A. Through the store.

Q. And you don't know how he got out to Northern Parkway? A. No, I don't remember.

Q. You were out there with him? Would you go out there with him? A. No, I think we met there.

Q. Oh, you met him out there? A. Yes. This job, it was outside job, he come, go outside.

Q. He didn't have to go in the house? A. No, no, not in the house, no, outside job.

Q. When you got there was he there already? A. Yes.

Q. Was there any work there like repairing steps, or something like that? A. No, no steps.

Q. Just painting? A. I had a lot of chairs and some posts, and was fixing things up to give to my daughter, so they would be nice and clean, and we removed some plants.

Q. Some plants? A. Some plants.

Q. And he did that work for you? A. Yes.

* * * * * *

(St. Tr. 324):

GEORGE B. PETITE,

was called as a witness for and on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

* * * * * *

(St. Tr. 366):

CROSS EXAMINATION

By Mr. Pierson:

* * * * * *

(St. Tr. 369-395):

Q. So, that according to that, at least according to your application for naturalization you were sixteen when you arrived in the United States. A. Sir, I believe that may be correct because it was in accordance with the passport that they had given me before I left the country.

Q. So that that would be your correct age; is that correct? A. I could not deny anything like that, sir. In those days they did not keep accurate records.

Q. Now, Mr. Petite, you showed the jury through your counsel a copy, a photostatic copy of a pass which you received on October 30, 1957 to see this man in jail; is that correct? In 1951? A. '51.

Q. Was that the first time you saw him? A. Absolutely.

Q. Had you received a pass from the Immigration Department on October 25, 1951 to see this man? A. I was given one but they called me back that in the investigation they make a mistake, the investigation would have been completed and I should return the thing, and I didn't go, so they called me on the 30th.

Q. And that was the first time that you had ever seen the man? A. To my recollection. I would not attempt to deny it.

Q. And you undertook to represent him and be his benefactor? A. Not—

Q. Be his lawyer? A. I went to see him first.

Q. You went to see him first? A. On the 30th I saw him in the Baltimore City Jail.

Q. And you got him out the same day? A. I went over to talk with him, sir, and after he told me these matters I went back to Immigration in order to make an attempt to reduce the bail.

Q. But you did get him out that day or maybe the next day? A. I mean about that.

Q. And then you became his attorney? A. Yes.

Q. To represent him in this case? A. Attorney of record, yes.

Q. Did you then get hold of the statement he had made to Mr. Phillips and the man who took the first statement from him when Mr. Kampos was the interpreter? A. Well, I read the—

Q. You read it? A. Yes.

Q. You didn't represent him when he made the statement, of course? A. No one—

Q. You didn't know he existed? A. No one is permitted to be present when they take the preliminary examination.

Q. Now, I show you this statement which was given to Mr. Phillips and ask you if you recognize that as one that you read in preparation for representing the man? A. This was not given to me.

Q. But you saw it, though? A. I saw it, yes.

Q. This was the first statement he made? A. Yes.

Q. Didn't it strike you as being rather odd that he gave his address as 3814 Northern Parkway, Baltimore, Maryland, on this first statement, or didn't you notice that? A. Yes, I made inquiry and they explained to me how the address got there, yes.

Q. How did it get there? A. When he was arrested he had a piece of paper in his pocket, as I understand it, and it was 3814 Northern Parkway.

Q. And that was your mother-in-law's home, wasn't it? A. It was but I—

(Mr. Flynn) I want to interrupt there if I may, sir. There is nothing in that statement which says that man says he lived at 3814. It gives this man as John George Sitaras, 3814 Northern Parkway, but no place in the statement does he say he lived there.

Now, that's the heading that was put on by the Immigration people, not by the man himself.

(The Court) I think that that is technically correct, that it was given as his address.

Did he say he lived there? It might be in the body, if that is the address that he gave.

(Mr. Flynn) Well—

(Mr. Pierson) Well, there is a signature here. Well, I'll have to follow it up with Mr. Phillips.

Q. (Mr. Pierson) You did notice that and inquired about it; is that right, that they had taken this from a piece of paper in his pocket? A. I asked where he lives in the Baltimore City Jail and he said that at the time he was arrested

they found a piece of paper in his pocket where he says 3814, but when I asked him he says he was living at 805 West 36th Street.

Q. Well, when you found out that he had a piece of paper in his pocket with your mother-in-law's address on it, didn't that strike you as being a strange thing? A. I didn't see that piece of paper.

Q. He told you that he had given that address? A. I asked to see that piece of paper and I didn't see it.

Q. Did you inquire of Kostatos why— A. I inquired of Kostatos and he told me that he had rented a room at 805 West 36th Street.

Q. Did you inquire from him as to whether he had given an address to the Immigration Department of 3814 Northern Parkway or had had a piece of paper in his pocket with the address of 3814 Northern Parkway from which the Immigration got the address? A. I inquired from him, and he told me that he was not living there but had gone there to do some odd job that his boss had told him to do for Mrs. Kosmides, my mother-in-law.

Q. And he never claimed to have lived there? A. Not to my knowledge, sir.

(Mr. Flynn) If Your Honor please, I don't like to interrupt, but if I may, he has not claimed in this Court that he lived there.

Q. (Mr. Pierson) On the 30th he gave you an address of 805 West 36th Street; is that right? A. That is my understanding, sir.

Q. Up to that time you didn't know where he lived? A. That's right.

Q. Except the Baltimore City Jail? A. Yes.

Q. Then you later came into possession of certain receipts, or your attorney did, which have been exhibited in Court? A. Yes.

Q. When you first saw them, were they pasted on the piece of paper as they were when they were presented in Court yesterday? A. Well, now, I saw them the first time at Mr. Flynn's office.

Q. And were they then— A. Excuse me. I am not clear as to that, whether they were pasted or not. I am not sure, sir. I am under oath and I want to give the correct answer.

Q. You don't recall whether they were pasted on a piece of paper or not? A. I remember that there was a piece of paper there; whether they were pasted or not, I am not too sure.

Q. You looked at the receipts that were introduced in evidence; is that right? A. Yes, sir, I looked at them at the front.

Q. Didn't you look at the back? A. No, I did not; I did not thoroughly examine them, no.

Q. In other words, you don't know what was on the back of this piece of paper, if anything? A. No, to be truthful.

Q. The first time you saw them was in Mr. Flynn's office?

(Mr. Flynn) If Your Honor please, I just can't sit here and let that go along, his coming into my office because it did not.

These papers, if I may be permitted to explain the first time—

(The Court) All right. You have raised that, Mr. Flynn, because there was testimony as to how they came there.

(Mr. Flynn) They were turned over to me. Now, sir, they were turned over to me at the hearing before the Grievance Committee.

(Mr. Pierson) By whom?

(Mr. Flynn) By this boy.

(Mr. Pierson) All right.

(Mr. Flynn) And they were offered as evidence, and the Grievance Committee kept them for months and months and months, and it wasn't until I demanded that all of it be sent back to me, that they came back to me and then I turned them—

(The Court) Were they turned over to you in the form in which they are now?

(Mr. Flynn) Yes. They were presented to the Grievance Committee in that form, and that was back in 1956, and pasted on a piece of paper, and that was marked, that was March 15, 1956.

(Mr. Pierson) All right.

(The Court) When you say pasted on paper, you mean both on the white paper and the brown paper?

(Mr. Flynn) Well, I didn't notice any white paper on them at all.

(The Court) Oh, yes, yesterday the receipts themselves were pasted first on a thin piece of white paper, and then on brown.

(Mr. Flynn) Well, that I don't know. I know that they were in the situation that I saw them yesterday when they were presented.

(The Court) On the brown paper?

(Mr. Flynn) Yes, on the brown.

(The Court) That's right, because you could hardly see the white, which only showed a little bit, but they were on white.

Q. (Mr. Pierson) So the first time you saw them was in Mr. Flynn's office?

(Mr. Flynn) No.

(The Witness) No, in the room.

Q. (Mr. Pierson) Were they in your possession at any time? In other words, did you keep them in your possession.

for any length of time? A. No, sir, I didn't have them in my office as far as I remember.

Q. You didn't have them anywhere? Did you yourself have these papers in your possession? A. No, I did not have them in my possession as far as I can recall.

(The Court) At any time?

Q. (Mr. Pierson) At any time? A. What?

Q. Except momentarily to examine them? A. Not to examine them when they were produced at the hearing.

Q. Then you saw them? A. Yes, I saw them.

Q. For the first time? A. That's right.

Q. They were not turned over to you in advance by this man who testified yesterday? A. Not that I remember, sir.

Q. Not that you remember? A. No.

Q. All right.

Now, Mr. Kostatos testified that he had sent you certain receipts because he was having some trouble with his landlady making a claim against him for additional money.

Do you remember getting any such receipts from him? A. No, I don't right now. If I may see the receipts.

Q. These receipts, however, that you saw in Court yesterday which were offered as an exhibit through your attorney are not receipts which were sent to you, if any were; is that right? A. Sir, I am not sure. If you have anything in mind to show me to refresh my memory, I would be very glad to answer.

Q. As far as you knew for the first time when these receipts were first shown to you, they were the first time you had seen them; is that right? A. I am not positive, sir. I am under oath and I want to make the statement that to support, and I am not a wizard at memory, and it's been so long now, a few years.

Q. Well, you may have seen them before; is that a fair statement? A. I may have, yes.

Q. And they may have been in your possession; is that a fair statement? A. They were not in my possession because I saw them at the Grievance Committee, and then they turned them over to Mr. Flynn.

(The Court) Well, we are not talking about what happened to them after the hearing before the Grievance Committee. The question is, these four receipts pasted on this paper which Mr. Flynn says were given to him by the witness, Mr. Moskotos.

(The Witness) Moskonos.

(The Court) At the time of the Grievance Committee.

Mr. Kostatos testified that he had sent you certain receipts when his landlady demanded more rent sometime after 1951, when he left there.

Did he ever send you any such receipts so you could prove to his landlady that he didn't owe you any rent? Do you remember yes, no, or you don't remember?

(The Witness) Your Honor, I do not remember receiving any receipts from him; but I remember that I had called the lady and told her that Mr. Kostatos had paid his rent in full, and I believe that I had taken, I had taken this receipt back to the lady to show her that these things were paid, and I think I left them there.

Q. (Mr. Pierson) You took these same receipts that you took back to show the lady? A. I couldn't say that; I don't remember.

Q. Well, if you had those receipts, and assuming these were the same receipts, since you can't remember, could they have gotten out of your possession into the possession of Mr. Moskonos? A. No, sir, those receipts, as far as I know, I returned, if I am correct, I think I returned, them to Mrs. Kenner to show her.

Q. To the lady? A. Yes.

Q. With whom you were negotiating? A. I wanted to show that the rent was.

Q. To prove he didn't owe any money? A. Yes.

Q. There was some discussion about owing money? A. Yes.

Q. To the landlady? A. Yes.

Q. And you remember that there were receipts sent to you by Moskonos? A. I think there were, yes.

Q. But you don't see how they could be the same receipts? A. No, I do not.

Q. And you do not recall any writing on the back of these receipts if they were on a piece of paper, you couldn't read them, could you? A. I could not read them on a piece of paper, no.

(The Court) You mean on these receipts?

(Mr. Pierson) On these receipts.

(The Court) The ones exhibited.

(Mr. Pierson) The ones offered in evidence.

Q. (Mr. Pierson) If they were on a piece of paper when you got them, as Mr. Flynn's statement seems to indicate, you could not have read what was on the back? A. That's right.

Q. And as to these receipts, until Mr. Moskonos produced them, you didn't even know of their existence; is that right? A. I did not know they were in existence at the time of the — when we went to the Grievance Committee.

Q. No, what I mean was, until Mr. Moskonos, who was here yesterday, produced these receipts— A. Yes.

Q. Because he heard you were in some difficulty? A. Yes.

Q. You didn't even know they existed; is that correct? A. As far as I remember, that would be the correct answer.

(The Court) Mr. Moskonos testified that he paid the rent in October, November, 1951 and pasted them on a piece of paper and put them in his pocket and kept them until he got out of the Army when he heard you were in trouble and took them to Mr. Flynn.

Now, have you ever seen them before he gave them to Mr. Flynn?

(The Witness) I don't remember seeing them before we went to the Grievance Committee for the hearing.

Q. (Mr. Pierson) And they were obtained from Mr. Moskonos and Moskonos gave them to somebody; is that right? A. That's right.

Q. And that is what— A. Well, these receipts.

Q. Tell us what happened, as to how these receipts turned up. A. At the hearing I was told by Mr. Moskonos, he says, "Examine all my certain things," and I found these receipts in there, and here it is, and I said to him, "I have to give those receipts to my attorney, Mr. Flynn."

Q. You found them where? A. I found them among his personal things when he came back from the Army, he examined some.

Q. That's what he told you? A. Yes.

Q. And you got them and turned them over to Mr. Flynn? A. Yes.

(The Court) When did you first know that Mr. Moskonos had these receipts?

(The Witness) He told me that he had heard about my difficulty and he had examined these personal belongings and he found among these belongings these receipts which he remembered that he had paid rent for Kostatos.

(The Court) You say he called you up? You didn't get in touch with him?

(The Witness) I beg your pardon, sir?

(The Court) Did you get in touch with him?

(The Witness) I got in touch with him because I wanted to find out when he first had met Kostatos.

(The Court) And then he told you that he had found these receipts?

(The Witness) Yes.

Q. (Mr. Pierson) Now, Mr. Petite, when you were in Chester, Pennsylvania, you knew Mike Sitaras? A. Yes.

Q. And for a brief period, I think he said something like seven months, you were in partnership with him in the confectionery business? A. Yes.

Q. Did you know his brother, George John Kostatos, or George John— A. Sitaras.

Q. Sitaras? A. Yes.

Q. And you knew George John Sitaras? A. There were three or four families with the same name that they lived in that same city in Chester in World War II and it was not only one family Sitaras but there were three or four families living there.

Q. Was this at the time of the second World War? A. I mean the first World War.

Q. And you lived in Chester then? A. Yes.

Q. What were the exact dates of your residence in Chester? A. I would presume from 1917 up to 1922.

Q. And during that time do you remember a family of Sitaras whose husband's name being George John and the wife being Maria? Do you remember that? A. I said, Mr. Pierson, that there were three or four families, I remember, and I remember now that lived there, which has refreshed my memory, yes.

Q. There was? A. Yes.

Q. And you remember, is this the family where you went out and tried to get a physician or midwife? A. No, this was the other family that left Chester after I left.

Q. This was not the family of George— A. No, no, sir, this was not.

Q. So that when you recalled this incident, you were confused between the family which left Greece and the family of George John? A. Yes.

Q. Do you know that John George Sitaras is dead? A. I learned that now.

Q. You didn't know it then? A. No.

Q. Did you know that John George was dead? A. No.

Q. So that Mr. Mike Sitaras could not have told you that before the testimony was taken in Baltimore at the hearing of February and June 1952? A. Mike Sitaras.

Q. Well, you didn't even see Mike Sitaras? A. No, Mike Sitaras, I had no contact with him for many years.

Q. And you didn't see him then with Kostatos? A. No, sir.

Q. You were not in his home? A. No, I was not, sir. It was all made up.

Q. What's that? A. It was all made up in order to throw the burden on the lawyer, the lawyer to get the blame.

Q. Mike Sitaras never testified anywhere, did he, as far as you know? A. He did testify.

Q. Mike Sitaras testified? A. Yes.

Q. He never testified in any of these Immigration hearings, did he? A. Not that I know of. I did not come in contact with him about the Immigration hearings at all.

Q. So that as far as you know Mike Sitaras did not either testify or give an affidavit in conection with the effort to show that this man, this young man whom we all are agreed on now as Kostatos, was John George Sitaras? A. As far as I know, no, and he said yesterday that I had solicited his—

Q. And you did not? A. Absolutely not.

Q. You did not know, did you, that this boat, the SANTA IRENE, had arrived in Baltimore? You had no interest in the boat in October 1951? A. I should say not, sir.

Q. You only found that out when this case came up and you found out that this young man had arrived on that boat; is that right? A. When the hearing took place.

Q. Did you receive any message at all from Mr. Mitsos that there was a young man on the boat and he wanted to get in touch with you? A. After the boat had left, yes.

Q. Did you know the boat had left? A. Mr. Mitsos had told me. He said the young man that was there was asking for you left with the boat.

He was here yesterday. He didn't tell me prior.

Q. He told you that the young man had left with the boat? A. No, he said in the SANTA IRENE, "There was a young man had asked about you, but the ship has left."

(The Court) Well, read it back. Didn't you just say that he had left with the boat?

(The Witness) Well, I assume, Your Honor, that he left with the boat.

Q. (Mr. Pierson) And Mr. Mitsos told you the boat had left? A. The next day, late in the afternoon he called me on the phone and he said there was a steamship here by the name of the SANTA IRENE and there was a young man there and he said the ship left.

Now, I assume that the man who was on the ship left with the ship.

Q. And he didn't give you the young man's name? A. No.

Q. Or tell you anything about him? A. He told me he was a cook.

Q. Well, now, you were in Greece on several occasions? A. Excuse me, sir, not several. I have made two trips since I arrived in the country.

Q. And they were when? A. One was 1936, and one was when my mother died in 1948.

Q. In 1936 do you remember meeting a family of Sitaras, this young man's family while you were in Greece?

(The Court) Not Sitaras, Kostatos.

Q. (Mr. Pierson) Kostatos, Kostatos. A. Mr. Pierson, in this town, when a person goes out of the country, they gather so many together that you cannot tell who is who. I cannot deny or affirm whether I knew or I did not know. I met so many people of the town that I did not know, who do you meet, what their names are and what the relationship is.

Q. And that is perfectly true also of your second trip at the time of your mother's death that you met a lot of people whom you did not know? A. You meet a lot of people, you greet them, and you do not know after many years whom you met and whom you did not meet.

Q. And I understand you to say— A. Yes, sir.

Q. —that you had no conversation with Louis Sitaras of Baltimore in his place of business prior to the — I withdraw that question.

I understand you to say that you had no conversation regarding this immigration matter with Louis Sitaras of Baltimore prior to the time that you met him in the Post Office Building immediately prior to the hearing; is that right? A. That is absolutely correct and I said that, if I may add, when we were arraigned before Mr. Ernest Volkart that Mr. Petite did not tell me any story, and that the alien told me, and he said, "I believe him."

Q. And that's what he said at the time that everybody was pleading not guilty to the charges in Philadelphia? A. No, it was at the hearing before Mr. Volkart.

Q. And you don't know why he was changing his story? A. This story has been changed by Immigration just like a nightmare, sir.

Q. Oh, the Immigration Department, in your opinion, has induced these people to tell these false stories? A. In order to give them immunity and to put everything on the lawyer, and the lawyer takes the blame.

Q. Well, you have been practicing law a long time, and don't you usually interview your witnesses in advance of a hearing or a trial? A. It is absolutely true when you have a civil case to defend or to prosecute as a plaintiff, but the Immigration cases, in my experience, I have not, and I never got in trouble before, you do not have to.

Q. You don't interview witnesses or make your mind up as to whether they are telling the truth or whether there are any holes in their story? A. No, sir, it is not done.

Q. You just put them on? A. No, sir, it is not done either. The Immigration authorities, the procedure that they have, you get all the information from the Examiners, and then if they have to put on any additional facts in the presence of the examiner you draw it out by questioning the client.

Q. And if you have any witnesses, you make no effort in advance to question them and hear what the story is going to be? A. I said, and I repeat that again, that in the Immigration cases you do not have to prepare yourself; you can go in there at the preliminary hearing, and there may be three or four other hearings and anything that you may add you may prepare at a subsequent hearing, and you do not have to make any preparation; the law is plain. It's all on the books.

Q. Did you know Louis Sitaras before this thing happened, before the hearing at which he appeared as a witness? A. Louis—

Q. Of Baltimore. Did you know him? A. Very well, yes. I knew his father and I knew his mother. In fact, when his mother died, I visited him at the City Hospital.

Q. And did you expect that he would be there with Mr. Kostatos or Sitaras, or did he tell you, "My witness is Louis Sitaras?" A. He said to me, "I am coming with my witnesses, Louis Sitaras, at the Immigration Hearing," because he had received letters under the procedure they have, they send one direct, registered letter to the alien, and a copy to the attorney, and the alien has the registered letter stating the time and place when the hearing is going to be.

So I told him—

Q. Excuse me. A. That's all right. So I told him I wanted him to produce him there and I am interested as to the true facts that he wants to tell the Examiner.

Q. That's what you told John George? A. Yes.

Q. You never said that to Louis? A. When I told him, when I called him, when his turn came after Mr. Carney got through with the alien, he says, "Do you have any other witnesses?"

I said, "Yes, the young man was Mr. Louis Sitaras of Baltimore, who is going to testify."

Q. Louis Sitaras — go ahead. A. I opened the door of the hearing room and I said to Mr. Sitaras, "Are you ready to go on?"

He said, "Yes," and before we went into the room, I said, "I want you to tell the Examiner the truth about this young man."

Q. Yes. A. And I stopped there.

Q. That was all you said? A. That's all I said.

Q. That was right in the hall? A. The hall is—

Q. Just like this hall? A. No, not this hall. It is some room downstairs, and the witnesses wait outside, and the Examiner is inside with the secretary, the Examining Officer.

Q. Yes. A. And the witnesses, and when you are through with one witness, the witness goes out and you call the next witness in, and that's all I had to do.

Q. And that's all you did was to call him out there, to come in and tell the truth? A. What you know about this young man, they were trying to establish his identity, whether he was born in Chester, Pennsylvania, or whether he was born in Greece.

Q. Now, this business about the identification of the birthmark, did you know that was going to happen before it happened? Did you know that Louis— A. Mr. Pierson, I do not argue with you. You have been a very competent attorney for many years. When you take over a witness you ask the questions that are necessary for the particular case.

In my capacity as such I asked these questions which were evident and I did in open hearing produce whatever facts I had to produce, and that's all I had to do.

Q. Yes, but what I am asking you is, did you know in advance of your asking the questions that Louis Sitaras would identify this man by a birthmark on his wrist? Did you know that, or was that something that just came out? A. Just came out at the regular course of hearing. Why, they were sleeping together, they knew each other, and they were eating and drinking together, and they should not hide anything, and that's why in the open hearing I presented my case to the best of my ability.

Q. In other words, you didn't know this business about the wrist, that it was something that came out from Sitaras? A. That's right. I asked — not Sitaras.

Q. Louis Sitaras? A. Not Louis Sitaras, from the alien. The alien told me that he remembered him in school, that he had a big mark on his hand and that he had big ears, and he called him Big John Ears or something like that, whatever words he used, I repeated in my examination.

Q. In other words, you knew that in advance of the examination? A. I told, I told the alien to tell me how does

he remember, and he said, "Here are two things. Look at this mark."

I never knew this man had a mark before.

And he said, "He had big ears," and in the presentation of my case I brought this out.

Q. In other words, you had not learned this from Louis Sitaras, but you learned it from the man now known as Kostatos? A. Kostatos had told me in the preparation of the case that Kostatos was the one that got Mr. Sitaras into this mess.

* * * * * *

(St. Tr. 396-402):

Q. Well, now, in February 1952, before the hearing, if you remember, did Mr. Kostatos live at 805 36th Street? A. Sir?

(The Court) You said before the hearing?

Q. (Mr. Pierson) Before the hearing of February 1952, did you know where Mr. Kostatos lived, or John George Sitaras? A. As far as my information is concerned, the information was from Immigration, it was 805 West 36th Street.

Q. Did you have that information in February 1952? A. Can I refer to my file?

The answer is 805 West 36th Street.

Q. Was Mr. Kostatos receiving any mail under the name of Kostatos at your office, 214 East Lexington Street? A. I can't answer, sir, if I don't know others who received mail there. The mail box is downstairs, and I can't deny or affirm.

(The Court) Well, Mr. Pierson asked you whether he was receiving mail at your office under the name of John George Kostatos?

(The Witness) Not to my knowledge.

Q. (Mr. Pierson) From his wife in Greece? A. If he was receiving mail, it was down in the mail box.

(The Court) He said at your office.

Q. (Mr. Pierson) To the mail box in your office? A. The mail box is downstairs in this building, and they have tenants there.

(The Court) He was not a tenant of yours?

(The Witness) No, sir.

(The Court) Well, what Mr. Pierson is asking you, the question is whether or not Kostatos received mail from his wife in Greece addressed to him as John George Kostatos at your office?

(The Witness) If he would have done that it was not done with my knowledge. I can't affirm or deny.

Q. (Mr. Pierson) Mr. Petite, yesterday there was produced in Court a statement signed by Mr. Kostatos, which was read to the jury. A. The affidavit, yes.

Q. Isn't it a fact that that paper was prepared in your office by you? A. By me?

Q. Yes. Didn't you prepare that paper and send it out to Ohio? A. No, sir.

Q. Did you ever see the original, either the paper or the original or any copy of it before you received it from the Attorney in Ohio? A. Personally?

Q. Yes. A. No, sir.

Q. Do you know whether it was prepared in Baltimore? A. If it was prepared in Baltimore, I was not a party to it.

Q. Did you know it was being prepared? A. No, sir.

Q. Did you have a conversation with the Attorney out there with reference to someone in Baltimore preparing that affidavit? A. I had a conversation with whom?

Q. With the attorney who was the Notary on that paper, Ticoras, did you have a telephone conversation with him

relative to the preparation of this affidavit? A. From the attorney?

Q. Yes. A. To the preparation of the affidavit?

Q. That's right, asking you to get the affidavit prepared and send it along to Ohio? A. After I have a letter from the president of the church out there, I was called to the phone that Mr. Kostatos, the Government witness, had met with an accident and he was willing to give an affidavit to the Government that all that he has done, he repents for it.

Q. All right. After you had that conversation did you have anything whatever to do with the preparation of that affidavit? A. Personally?

Q. Yes. A. No, sir, I did not.

Q. Do you know who prepared it? A. I found out after it was received in the office and executed.

Q. Who prepared it? Ticoras? A. I am not sure whether Ticoras prepared it or who prepared it.

Q. Do you know who prepared it?

(Mr. Flynn) He said he didn't know.

(The Witness) I didn't know.

Q. (Mr. Pierson) You say you did not send that affidavit to Mr. Ticoras? A. What?

Q. You say you did not personally or anyone under your direction send that affidavit to Mr. Ticoras? A. That's right.

(The Court) Do you know whether it was prepared in Cleveland or in Baltimore?

(The Witness) I found out, sir, subsequent, I found out that it was requested from Ohio to send out there.

(The Court) Who prepared it? Do you know who prepared it?

Q. (Mr. Pierson) Did you send it? A. No, I didn't send it.

(The Court) Do you know who sent it out?

Q. (Mr. Pierson) Do you know who sent it out? A. Yes, sir, I know now.

Q. Who? A. I found out, Mr. Milio.

Q. Mr. Milio sent it?

(Mr. Milio) I didn't send it, but I can explain about the preparation of it.

I can explain how it came to be, sir.

(The Court) The question is to Mr. Petite. Mr. Petite is on the stand.

Do you know who prepared it?

(The Witness) At the time it was prepared, I didn't know, sir.

(The Court) Well, do you know now who prepared it?

(The Witness) Yes, I know who prepared it.

(The Court) Mr. Pierson has asked you that several times.

Q. (Mr. Pierson) Who prepared it? A. It was prepared by Mr. Milio.

Q. And sent to Warren, Ohio?

(Mr. Flynn) No, he didn't send it to Warren, Ohio.

(The Court) Mr. Milio is one of your lawyers, is that right, in this case?

(The Witness) Yes.

(The Court) If Mr. Milio prepared it, do you know how it got to Ohio?

(The Witness) It was sent to Ohio at the request of the attorney there to the alien.

(The Court) How was it sent? Do you know?

(The Witness) I believe it was sent by mail.

(The Court) By whom?

(The Witness) Now, it was from, I think, my secretary mailed it. I don't know exactly who mailed it.

(The Court) You think your secretary mailed it?

(The Witness) I think so.

(The Court) Your testimony was that you didn't mail it or caused it to be mailed but you think your secretary mailed it?

(The Witness) Yes, it was mailed from the office, I understand, but the date it was mailed, I was not in the office.

(The Court) All right.

Q. (Mr. Pierson) It was mailed from your office? A. So I understand.

* * * * * *

(St. Tr. 423-443):

EARL H. WILLIAMS,

was called as a witness for and on behalf of the Government in rebutttal and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pierson:

Q. Mr. Williams, what is your occupation? A. I am a special agent of the F.B.I., and as such I am assigned as a questioned documents examiner at the F.B.I. Laboratory in Washington, D.C.

Q. And your post is in the Federal Bureau of Investigation Building itself in Washington, D.C.? A. Yes.

Q. What are your duties in the laboratory? A. Well, as an examiner of questioned documents, it is my duty to

compare questioned documents or documents of unknown origin or documents that have alterations, anything that can be questioned about a document, it is my duty to make an examination of the document and to determine whether or not it has been altered or forged or copied from another document.

Q. What training have you received in this specialty? A. Well, I received—

(Mr. Flynn) If Your Honor please, I am going to object to all of this testimony. I don't see how this gentleman from Washington can come over here to testify to anything in this case. We haven't submitted anything to him for questioning, and if the Government has, we do not know what it is, and I think he ought to lay a foundation.

(The Court) I don't think you are really surprised, Mr. Flynn. Yesterday these receipts were given to the Government, these four receipts were given to the Government so that they could test them, and I told you at the time that if you wanted to go with the Government or have someone from your side of the case stay with the F.B.I. while they tested them, you would be welcome to do so and you said, I think, both in open court and privately yesterday that you were satisfied to have the Government test them.

(Mr. Flynn) Oh, I didn't say I was satisfied to have the Government do it.

(The Court) You were satisfied to have it done out of your presence as well as in your presence.

(Mr. Flynn) I must take exception to Your Honor's classification and telling the jury just what this man has already testified to because that's the very thing that I don't think they should know until after my objection has been cleared up.

(The Court) Well, as I understand it, he is going to testify about—

(Mr. Pierson) He is going to testify about these four receipts that he took.

(The Court) If he is going to testify about the four receipts, then I understood from our conference yesterday, I didn't mean that you had waived any objection that you had except your objection to their being tested out of the presence of you and your associate counsel.

I think you did waive yesterday your right to be present while they made the test; but aside from that you have not waived any objection to the evidence, Mr. Flynn, and I will be glad to note your exception, to overrule it, and to give you an exception,—

(Mr. Flynn) All right.

(The Court) —to the testimony.

Do you want Mr. Pierson to further qualify the witness?

(Mr. Flynn) No, sir.

Q. (Mr. Pierson) Have you ever qualified to testify in other cases as an examiner of questioned documents? A. Yes, sir.

Q. Now, Mr. Williams, you were handed yesterday certain papers which were in a receipt, the four receipts which were pasted on pieces of paper; is that right? A. That's correct.

Q. And this paper which has been marked Defendant's Exhibit 1 in Case No. 23739 Criminal, admitted in evidence May 5, 1958, are these the papers that you were handed? A. Yes, sir.

Q. Now, what did you do with them, first? A. Well, first I made an examination of the handwriting and the notations including the date that appear on the receipts.

Q. Did you do that before you took them apart? A. Yes, sir.

Q. Did you make enlargements of them? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. And do you have these enlargements with you? A. Yes, sir.

Q. Are these the enlargements? A. Yes, sir, those are the enlargements.

(Mr. Pierson) I offer these in evidence, Your Honor.

(Mr. Flynn) I object to these because he is introducing them as all being in the same handwriting. Whose handwriting?

(The Court) Mr. Pierson, I suggest that you tell privately Mr. Flynn what you propose to prove.

Are you questioning the handwriting?

(Mr. Pierson) No, Your Honor.

(The Court) Except the fact that they are all written by one person, that is, that they are signed by one person.

(Mr. Pierson) I don't think that there is any quarrel about that, that they are all signed by the same person.

(The Court) I will overrule the objection.

(Mr. Pierson) I offer these in evidence as Government Exhibits 6 and 7.

(The Clerk) What about this?

(Mr. Pierson) 6-A and 6-B.

(Enlargements were marked Government's Exhibits 6-A, B, and 7.)

(Mr. Pierson) Now, I would like to show these to the jury. I will put these photographs on the blackboard.

Q. (Mr. Pierson) Now, would you come over to the blackboard, Mr. Williams, and point out just what you observed about the first two receipts? A. This is a five times enlargement, this first enlargement is a five times enlargement of the first selected receipt that appears on Exhibit 1; and the second enlargement is about a five times enlargement of the second receipt that appears on Exhibit 1.

In the examination, the ones in 1951 were made with heavier pressure with a softer pencil than the rest of the

ones in this. Also, at least two strokes were used in making the ones. This use of two strokes appears in both of these enlargements.

The ones were made with the use of two strokes, and this characteristic appears in both of the enlargements in two of these receipts, and the other one that appears on the receipts, just a simple one stroke has been used.

The ones in '51 show up much darker indicating more pressure or a softer pencil on the two enlargements.

Q. Now, on 6-A — 6-B, what did you find? A. On 6-B I made an examination again of the date. Now, on the Exhibit 6-B, the first enlargement is an enlargement of the fourth receipt, and the second enlargement is—

Q. That's the third? A. That's the third here. The third enlargement is an enlargement of the third receipt and the fourth enlargement of 6-B would be an enlargement of the fourth slip.

Q. Now, what did you detect, if anything, on the fourth enlargement of that set? A. In this Exhibit the 51 as it appears here 1951, originally there was a 4 where the 1 now is.

Q. And what makes you say that? Explain that first. A. Well, part of the 4, the body of the 4 appears here with a recurve, appears with a recurve.

The original part of the 1, or the original part of the downstroke of the 4 appears above the stroke of the 1 that now appears here.

The ending stroke in the body of the 4 appears like this on the right side of the 1 that appears there on that now (indicating).

Also this part of the 4, the body of the 4 and the characteristic, the top of the 1 would eliminate other figures such as 5, it wouldn't agree with 5's that appear on the exhibit, and the 3's, they differ from the 3's that appear on the exhibit.

So that is the basis, for these reasons, it is my opinion that a 4 originally appeared here as 54 instead of 51.

(Mr. Pierson) Now, I want the jury to follow that a little more closely, and they can come out of the box and look at these exhibits.

(The jury left the box and passed in front of the exhibits.)

Q. (Mr. Pierson) Now, Mr. Williams, as to the fourth receipt which was dated November 3, 1951, what did you find about that? A. Well, I found here again that the 1 was made with more pressure than the rest of the writing on the receipt, and the double stroke has been used to make the 1 again.

Q. Would you resume the witness-stand.

(Witness resumed the stand.)

Q. (Mr. Pierson) What did you then do with this exhibit? A. Then I steamed the receipts to loosen them from the paper that they were glued to.

Q. How many papers were they glued to? A. Two papers. There is a manila paper and a white bond paper.

Q. Did you use any chemicals of any kind? A. No, sir.

Q. Just used water? A. Distilled water, yes.

Q. Well, did the water discolor it in any way? A. Yes, in the, either the water or the heat, the glue has come through the receipts and also some of the ink writing on the reverse side has migrated to the front of the receipts.

Q. You say there was ink writing on the reverse side? A. Yes, sir.

Q. Is that English? A. No, sir.

Q. Are you able to read it? A. No, sir.

Q. Would you show that to the interpreter, and I will ask him if he will interpret it. You made a blow-up of that, too? A. I made enlargements of those too, yes.

(Mr. Flynn) Of course, all this is coming in subject to my objection, Your Honor.

(The Court) Yes, all coming in subject to your objection. Objection overruled and exception granted.

(Mr. Pierson) Can you read it from the back or would you prefer to have the enlargement?

(The Interpreter) On the back of the first receipt, the following appears. This says — Should I read it first in Greek, Your Honor?

(The Court) I don't think it will help the jury very much. It certainly won't help me. Just read it in English.

(The Interpreter) This is, this says October 13th.

(The Court) Mr. Flynn and Mr. Petite were shown copies of this, were they?

(Mr. Flynn) We were shown, not these.

(The Court) They were shown—

(Mr. Pierson) Copies.

(The Interpreter) I am reading from the back of the receipt dated October 13, 1951, and I read as follows:

"I paid from the 29th of March up to the 5th of April. Then now, what does she want? I left on the 3rd of April. She owes me two or three days."

I would like to verify that again by reading it back on the blow-up.

"I paid from the 29th of March til the 5th of April. Now then what does she want? I left on the 3rd of April. She owes me two or three days."

Q. (Mr. Pierson) Now, would you read the translation, what is on the back of the second receipt in that series?

(The Interpreter) I am reading—

(Mr. Pierson) The one dated October 20, 1951.

(The Interpreter) I am reading from the back of the second receipt in this series which is dated October the 20th, 1951, and after reading it to myself in Greek, I translate it as follows:

"I paid from the 22nd up to the 29th of March."

(Mr. Pierson) Is that all?

(The Interpreter) That's all.

(Mr. Pierson) Would you look at the third receipt, which is dated October 27, 1951 and tell us what that says?

(The Interpreter) I am looking at the third receipt in the series which is dated October the 27th, 1951, and turning it over and reading to myself in Greek, and then translating that reading, I interpret that to say quote:

"I paid from the 15th up to the 22nd of March." Unquote.

(Mr. Pierson) Take the fourth receipt.

(The Interpreter) Looking at the fourth receipt in this series, the date of which I cannot make out at this time because there is ink coming through.

(Mr. Pierson) Can you see this?

(The Interpreter) I don't see that, but turning it over, anyhow, and reading from the back of the receipt, the fourth in the series here, and after reading that, I interpret that reading to say quote:

"I paid from the 8th up to the 15th of March." Unquote.

(Mr. Pierson) Do you want the interpreter?

(The Court) You better stay a minute because they may want you for cross examination.

(The Interpreter) That's all right, Your Honor.

(The Court) You have been here so long, I think you better stay to the end. I'm sorry.

Q. (Mr. Pierson) Mr. Williams, can you tell us whether that writing which appears on the reverse side was on

that paper when you received the paper? A. Yes, sir, it was.

Q. And was that pasted on other pieces of paper? A. Actually you can see the beginnings of the ink that had faded through the paper, but you couldn't see the writing itself very plainly until it was steamed off.

(Mr. Pierson) Witness with you.

CROSS EXAMINATION

By Mr. Flynn:

Q. Mr. Williams, do I understand that these receipts, the faces of them are all written in the same handwriting? A. With the exception of the dates.

Q. With the exception of the dates? A. Yes.

Q. What distinction do you make in the dates? A. Well, the only distinction I make is that they are not comparable with the handwriting that appears on the documents.

Q. When you say "not comparable", what do you mean, they are not comparable? A. I mean you don't have enough words, letters, combinations with the other handwriting. The identifications of the handwriting on the face of those documents were made on the basis of using the documents as a group.

Q. What you are saying is that, as I understand it, that there isn't enough writing on here to be able to make it comparable or to be able to compare them with the balance of these receipts; is that right? A. That's right, yes, sir.

Q. You mean that for October too, it's not written by the same? A. I did not say it was not written, I said I could not determine whether it was written.

Q. You don't know whether they are all written by the same person? A. With the exception of the date.

Q. When you were talking about the date, you were talking about the numerals? A. All of it, the date and the numerals.

Q. Well, again I ask you, why do you say that the word "October" on this was not written by the same hand that wrote the balance of it?

(Mr. Pierson) Objected to. He didn't say that.

(The Court) He said that there was not enough of the date that he could be sure one way or the other.

Isn't that what you said?.

(The Witness) That's correct.

Q. (Mr. Flynn) If that's what he means, why do you make a point of saying that the date was something of which you are critical?

(The Court) Well, he didn't testify to that on direct examination. You asked him whether all of it was in the same handwriting, and he told you how much he is sure of and how much was doubtful.

(Mr. Flynn) My understanding was that he said that all of this was in the same handwriting.

Q. (Mr. Flynn) Did you testify to that? A. I don't believe I did, sir.

Q. What did you say to Mr. Pierson when he asked you about the writing on there? A. I don't know what the first question was. I testified that I had examined all the handwriting that appeared on the faces of the receipts. I don't believe I stated a conclusion at that time until you asked me.

Q. Well, even now you are not sure whether it was all written in the same handwriting? A. With the exception of the date it is my opinion that the rest of the handwriting on the faces of the receipts was written by one person.

I can't be sure of the date one way or the other. I have no opinion as to whether the dates were or were not written by that person.

Q. You don't know whether the dates were written by the same person or not? A. No, sir.

Q. Now, let me get to this 51. You talked about the heavy line. Now, what is significant about that, putting one down or maybe two lines? Is there anything significant about that? A. Well, it's significant in the fact that most people don't do it.

Q. Well, some people do, don't they? A. I don't remember offhand seeing anyone that did. I know that in the majority of handwritings that I have seen, most people make one's by just making a simple downward stroke.

Q. Is this the one you referred to, this October 13th? A. I have to come over and look at it, sir.

This is the third.

Q. The third? A. Yes.

Q. And you don't see anything significant with the first one except the fact that one is heavy and it's probably got more than one stroke? A. That's right.

Q. Now, as to the second one, do you have the same criticism as to that? A. The same observation as to that; it's made with heavy pressure or a softer pencil, it's made with more than one stroke.

Q. The 5 is made just in the ordinary handwriting without any heavy pressure? A. The 1 and 5 in the second receipt which is dated October 20th, the top of the 5 has been retouched in with some ink, but the rest of the 5 appears to have been written in the normal pressure.

Q. That's the second one? A. Yes. The ink has been retouched on the ending stroke of the 5.

Q. Now, didn't you testify that some ink came through these receipts from the back of it? A. Yes.

Q. Couldn't that be some of the ink that came through? A. It appears to be a different color.

Q. You are not positive whether this is the same? A. No.

Q. And the 5, is there anything there to indicate whether they are heavier? A. No, sir. This is the first and the second, and the heavier ones are made with two strokes.

Q. The signature on these receipts you are positive are in the same handwriting on all four of them? A. Considering them as a group, yes.

Q. But you are critical of the date?

(Mr. Pierson) Objected to.

(Mr. Flynn) Well, if he's not critical, I don't know.

(The Court) It depends on what you mean by critical. I think he has stated what he meant, and he has no opinion one way or the other as to whether the dates are written by the same person who wrote the rest of the receipts.

Now, if you understand that to mean critical, if that's the definition of critical, then you are correct that he has criticized it, and Mr. Pierson was wondering whether it was a question of semantics there, and if that's criticizing it, then he has criticized it.

Q. (Mr. Flynn) Well, let's look at it this way: You cannot say positively they were written in different handwriting than the balance of the receipts? A. No, sir.

Q. Now, this writing that's on the back has been interpreted and read for us. You are not in a position to say anything in comparing the writing there with the writing on the front? A. No.

Q. One in Greek and the other is in English.

So all you know is that there is something written on the back and the interpreter tells us that's what it says? A. Yes.

Q. Have you any idea or have you made an examination as to when the writing was put on the back of those receipts? A. The ink writing on the reverse side?

Q. Yes. A. No, sir, I don't have any idea when it was put on.

Q. You couldn't tell by the type of ink or anything? A. No, sir.

Q. So all you know is that there is some Greek writing on the back of each one of them, and the interpreter tells us that it refers to something about somebody paying rent in March or April, but other than that you don't know anything about it? A. I don't even know that this is Greek. I know that there is some kind of foreign writing, but there is some sort of writing on the back of the receipts.

(Mr. Flynn) All right. Thank you very much.

(Mr. Pierson) Thank you.

(The Court) Have you finished?

(Mr. Pierson) He may be excused?

(The Court) He may be excused, yes, sir, except that he's going to lose these receipts.

(Mr. Pierson) Yes, sir, but I would like to have him before he goes, to identify these large exhibits, just to be sure, and tell us what they are.

(The Court) These have been marked, but these have not.

(The Clerk) Yes.

(Mr. Pierson) These haven't been marked.

REDIRECT EXAMINATION

Q. (Mr. Pierson) Now, what is this first large one? A. This is about a five times enlargement of the ink writing that appears on the reverse side of the exhibit, the receipt, which purports to be dated October 13, 1951.

(Mr. Pierson) I offer that as Government Exhibit 7-A.

(The Clerk) Government Exhibit 7-A.

(Enlargement was marked Government Exhibit 7-A.)

(The Witness) In the first enlargement on the next sheet, which is about a five times enlargement of the ink writing that appears on the receipt with the purported date October 27, 1951.

The second enlargement is a five times enlargement of the ink writing that appears on the receipt with the purported date of October 20, 1951; and the third enlargement is about a five times enlargement of the ink writing that appears on the reverse side of the receipt with the purported date of November 3, 1951.

(Mr. Pierson) I offer this as Government Exhibit 7-B.

(Mr. Flynn) Your Honor, I would like to ask Mr. Williams:

RECROSS EXAMINATION

By Mr. Flynn:

Q. Why do you refer to it as a purported date? A. Because I am not sure that they are the actual dates.

Q. That they are the actual dates on these papers, aren't they? A. Well, they are the dates that appear there now, yes, sir.

* * * * * *

(St. Tr. 444-449)

WILLIAM H. PHILLIPS,

was called as a witness for and on behalf of the Government in rebuttal and, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your full name for the record.

(The Witness) William H. Phillips.

DIRECT EXAMINATION

By Mr. Pierson:

Q. Where do you live? A. Long Beach, California.

Q. And were you in 1951, the latter part of the year associated with, employed by the Bureau of Immigration and Naturalization Service, Baltimore, Maryland? A. Yes.

Q. In what capacity? A. I was Patrol Inspector.

Q. Immigration Service? A. I was Patrol Inspector of the Immigration and Naturalization Service.

(The Clerk) Keep your voice up.

Q. (Mr. Pierson) And did you have occasion to take a statement from John George Sitaras referred to as Georgios Modestou Kostatos? A. Yes.

Q. Now, I show you this paper and ask you to identify it. A. This is a record of a sworn statement taken by me from John George Sitaras on October 23, 1951 in Baltimore, Maryland.

(Mr. Pierson) Your Honor, I would like to get a certified copy and offer that in evidence.

Q. (Mr. Pierson) Now, in the meantime while I am getting a copy, would you look at that and tell us who was the interpreter? A. Anestes Kampos was the interpreter.

Q. And did Mr. Carney have anything to do with that statement? A. No, sir.

(Mr. Pierson) Now, I offer the certified copy of that in evidence as Government Exhibit 8.

(Statement of Sitaras, October 23, 1951 was marked Government's Exhibit 8.)

Q. (Mr. Pierson) Do you know, Mr. Phillips, where you obtained the alien's address, the suspected alien's address? A. I obtained the alien's address at the Cafe where I apprehended the alien in 1951.

Q. At the New Times Cafe? A. I believe that was the name.

Q. And was that on the day that you apprehended him? A. Yes, sir.

Q. Was that the same day the statement was taken? A. Yes, sir.

Q. Do you recall whether you obtained it from a person, either the alien or someone else, or from a piece of paper? A. I believe I obtained it from the alien through the interpreter or one of the employees at the cafe.

Q. In other words, not Mr. Kampos? A. No, sir.

Q. Someone else interpreted at that point? A. Yes, someone at the cafe.

Q. Did you go to this address? A. Yes, I did.

Q. Was there anybody there? A. No, sir.

Q. Did the house appear to be occupied or vacant? A. It appeared to be occupied.

(The Court) You say the house, the address, that's the Northern Parkway address?

(The Witness) The Northern Parkway address, yes.

(Mr. Pierson) That's 3814 Northern Parkway.

(The Witness) Yes.

(The Court) Got it from the alien or the interpreter?

(Mr. Pierson) Witness with you.

CROSS EXAMINATION

By Mr. Flynn:

Q. When you went out there you didn't get into the house, did you? A. No, sir.

Q. Did he tell you that he was living there, the alien himself? A. Before I went out there, it was my understanding that he lived there.

Q. You testified you got the information from someone else in the party or somebody in the restaurant; is that correct?

(Mr. Pierson) I object to that. He didn't say that.

(The Court) I think he testified, Mr. Flynn, that he obtained it from the alien through an interpreter at the cafe, not Mr. Kampos who interpreted the full statement, someone who interpreted for the alien at the cafe.

That's what my note shows. Is that correct?

Q. (Mr. Flynn) Where did you get this number to go out there, 3814 Northern Parkway? A. From the cafe, someone in the cafe.

Q. Someone in the cafe? A. Yes.

Q. You didn't get it from the alien? A. Through the alien, from the interpreter in the cafe.

Q. All right. Didn't one of the owners in the cafe go out there with you? A. I don't recall him going.

Q. He testified here yesterday or the day before that he did. A. I don't remember.

Q. Well, now, this Mr. Kampos, were you here when he testified? A. Yes, I think so.

Q. He's the same Mr. Kampos that was the interpreter in this hearing? A. Yes.

Q. And in this particular instance you were the arresting officer and also the judge, weren't you?

(Mr. Pierson) Objected to.

A. Not the judge, no.

Q. You took the statement, didn't you?

(The Court) That wasn't a hearing, Mr. Flynn.

(The Witness) Yes.

(The Court) The testimony is clear that there is a difference between taking a statement from the man and acting as judge at the hearing. Now, this man was not acting as judge. He was taking a statement.

Q. (Mr. Flynn) Did you have the right to turn him loose if you wanted to? A. No.

[fol. 327]

IN UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7694.

George B. Petite,
Appellant,

versus

United States of America,
Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore.

Argued November 5, 1958.

Before SOPER and HAYNSWORTH, Circuit Judges, and BOREMAN, District Judge.

Bernard J. Flynn and Louis R. Milio (B. Sydney Becker; Ginsberg and Ginsberg, and Hyman Ginsberg, on brief) for Appellant, and Leon H. A. Pierson, United States Attorney, and Arnold M. Weiner, Assistant United States Attorney, for Appellee.

[fol. 328] OPINION—January 5, 1959

BOREMAN, District Judge:

This is an appeal by George B. Petite, a member of the Bar of Baltimore City, from a sentence of imprisonment imposed by the United States District Court for the District of Maryland, the appellant having been convicted by a jury of the crime of subornation of perjury on two separate counts of an indictment.

The first count of the indictment charged that the appellant, hereinafter referred to as the defendant, procured Georgios Modestou Kostatos to commit perjury in a hearing conducted by the Immigration and Naturalization Service on February 14, 1952. The second count charges that the defendant procured Eleftherios Sitaras, of Baltimore, Maryland, to commit perjury in a hearing conducted by the Immigration and Naturalization Service on June 16, 1952. Both hearings were in Baltimore, Maryland, and were held in connection with a deportation proceeding against Kostatos, the perjurer named in the first count.

On October 12, 1951, Georgios Modestou Kostatos, a native of Greece and a Greek citizen, arrived at the Port of Baltimore as a crewman on the S. S. Santa Irene. When the ship left Baltimore the next day, Kostatos was not aboard and, ten days later, on October 23, 1951, he was arrested on a warrant charging that "at the time of entry, he was an immigrant not in possession of a valid immigration visa". Kostatos appeared at a deportation hearing on February 14, 1952, to show cause why he should not be deported. The defendant entered a formal appearance in the case as counsel for Kostatos, and the defense against deportation was that Kostatos was an American citizen and not an immigrant. John V. Carney, a Deportation Ex-[fol. 329]-aminer, was the presiding officer and administered the oath to the witness Kostatos.

When questioned by the defendant, as his counsel, Kostatos claimed that his real name was John George Sitaras and that he was the son of Georgios and Maria Spanos Sitaras; that he was born in Chester, Pennsylvania, in 1919; that he was baptized in Philadelphia in 1920; that when he was four or five years old, his parents sent him to Greece because he was sick, and that he grew up in Greece, reared by his grandfather there. In explaining his reason for using the name "Kostatos" as a crewman, he stated that he had to show a military discharge to get employment on the ship. He asserted that he had had no military service, and that he used the papers of a friend named Kostatos. Following his testimony, the hearing was adjourned.

The hearings were resumed in Philadelphia on April 24, 1952, before a different Deportation Examiner, the purpose of that hearing being the taking of depositions of certain

people who resided in Pennsylvania and who appeared in Philadelphia as witnesses for Kostatos.

On June 16, 1952, a third hearing was held in Baltimore, at which the same John V. Carney presided and administered the oaths, his formal title this time being that of "Hearing Officer". The defendant called as a witness Eleftherios Sitaras, also known as Louis Sitaras.[1] This witness testified that he was an American citizen but that [fol. 330] he was born in Greece, where he lived until he was eleven years old. He said that, while in Greece, he attended school with Kostatos and he gave testimony to bolster his identification of Kostatos as John Sitaras.

The indictment here was returned on August 21, 1956. Previously, the defendant and five others, including Kostatos and Sitaras (of Pennsylvania), were indicted in the Eastern District of Pennsylvania and charged in two counts with conspiring to make false, fictitious and fraudulent statements to officers of the INS, and with conspiring to defraud the United States and the INS for the purpose of preventing the deportation of Georgios Kostatos.

Another indictment against the defendant, in the Eastern District of Pennsylvania, charged him with subornation of perjury in connection with testimony of witnesses, including Louis Sitaras (of Pennsylvania), at the Philadelphia hearing. The defendant, after the trial in the United States District Court for the Eastern District of Pennsylvania, was convicted upon his plea of nolo contendere on the first count of the conspiracy indictment, sentenced to pay a fine and to imprisonment for two months. On motion of the United States Attorney, the second count of the conspiracy indictment and the indictment charging subornation of perjury were dismissed.

At the trial of the defendant in the Maryland District Court, Kostatos repudiated his former statements and admitted his identity, testifying that he was born in Greece and that the defendant had told him to claim to be John George Sitaras. The evidence disclosed that John George

[1] Two men in this case are known as Louis Sitaras. One lives in Marcus Hook, Pennsylvania, and testified at the Philadelphia hearing but not in Baltimore. The one to which reference is here made lives in Baltimore and testified at the second Baltimore hearing but did not testify in Philadelphia.

[fol. 331] Sitaras, an American citizen, had been dead for several years, a fact known to the defendant.

One of the questions for determination here arises because of the lower court's refusal to dismiss the Maryland indictment, the defendant urging that a trial on the Maryland indictment would place defendant Petite in double jeopardy because of the prior proceedings in the Eastern District of Pennsylvania in violation of the Fifth Amendment to the Constitution of the United States. Chief Judge Thomsen, of the District Court of Maryland, rendered his well-considered and able decision, *United States* v. *Petite*, 147 F. Supp. 791, holding that "No double jeopardy has been shown". We approve the decision as reported.

In asserting that the District Court erred in denying the claim of double jeopardy, counsel for the defendant point to several decisions of the Supreme Court of the United States involving double jeopardy, including *Pereira* v. *United States*, 347 U. S. 1 (1954); *United States* v. *Bayer*, 331 U. S. 532 (1947); *Gore* v. *United States*, 357 U. S. 386 (1958); *Hoag* v. *New Jersey*, 356 U. S. 464 (1958); and *Ciucci* v. *Illinois*, 356 U. S. 571 (1958). These cited decisions were by a divided court, and counsel for the defendant persistently urged this court to disregard the majority opinions in these cases and to follow the dissenters. This court is bound by the decisions of the Supreme Court whether rendered by the full court or a divided court.

The defendant next points to the statutes defining perjury [fol. 332] and subornation of perjury.[2] He contends that

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[2] Title 18 U. S. C., Sec. 1621, 62 Stat. 773:

"Perjury generally.

"Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury • • •."

Title 18 U. S. C., Sec. 1622, 62 Stat. 774:

"Subornation of Perjury.

"Whoever procures another to commit any perjury is guilty of subornation of perjury • • •."

the Immigration Act of 1917, Sec. 16, 39 Stat. 874, 885, 8 U.S.C.; Sec. 152, provided for physical and mental examination of aliens coming into the United States, and although Immigrant Inspectors were authorized to make the examination and to administer an oath in so doing, that section was limited in its effect to persons just entering the country. He argues: That Section 17 of the same Act, 39 Stat. 874, 887, 8 U. S. C., §153, provided for boards of special inquiry as to immigrants who had just come into the country and were detained at the port, such boards "appointed by the commissioner of immigration or inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of the law": that Section 17 has no application here where the immigrant Kostatos had already entered the country, was employed herein and was claiming a right to remain here as a citizen by birth; that nowhere in that section was there a provision for the administration of an oath; that this is not a case "in which a law of the United States authorizes an oath to be administered" as contemplated by the perjury statute; that, consequently, neither Kostatos [fol. 333] nor Eleftherios Sitaras committed the crime of perjury and, absent perjury, the conviction of the offense of subornation of perjury can not be sustained.

Since a decision on this question would be of no small import, it is deemed necessary to set forth the pertinent legislative history of the immigration laws at some length. The Immigration Act of 1917 was a comprehensive statute which revised and codified all previous laws respecting the immigration, exclusion and deportation of aliens. The Secretary of Labor, aided by the Commissioner General of Immigration,[3] administered the Act, and the latter, under

[3] In 1940, the administration of the Immigration Act was transferred from the Secretary of Labor to the Attorney General. In 1933, by Executive Order No. 6166 (5 U. S. C. A., Cum. Supp., page 70), the Bureau of Immigration was consolidated with the Bureau of Naturalization, the combined organization being known as the Immigration and Naturalization Service. The new organization was headed by an officer designated as the Commissioner of

the direction of the former, was vested with broad powers in the formulation of rules and regulations. Section 23 declared "That the Commissioner General of Immigration shall perform all his duties under the direction of the Secretary of Labor. Under such direction, he shall have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder; he shall establish such rules and regulations, prescribe such forms of bonds, reports, entries, and other papers, and shall issue from time to time such instructions not inconsistent with law, [fol. 334] as he shall deem best calculated for carrying out the provisions of this Act * * *". 39 Stat. 874, 892.

Pursuant to the rule-making authority granted by Section 23 of the 1917 Act, a system of regulations for the conduct of deportation hearings was promulgated. A brief summary of these regulations and the practice followed under them may be found in the opinion of the Court in *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 45 (1950).

In an effort to standardize administrative practice, Congress enacted the Administrative Procedure Act in 1946 (5 U. S. C. A., Sec. 1001, et seq.; 60 Stat. 237). This Act sets forth the basic formalities to be followed in every case of adjudication required by statute (5 U. S. C. A., Sec. 1004; Sec. 5 of the A. P. A.). The function and authority of officers presiding at the hearings, together with such other matters as the burden of proof, the right to cross examination, and the components of the record for decision, are detailed in Sec. 7 (5 U. S. C. A., Sec. 1006). Among those things mentioned as within the powers of a presiding officer is the authority to "administer oaths and affirmations". Section 8 prescribes the steps to be taken in the rendering of the initial decision by the presiding officer and the review of it by the agency (5 U. S. C. A., Sec. 1007).

Immigration and Naturalization who acceded to the duties and authority previously possessed by the Commissioner General of Immigration. Accordingly, the new title of the new officer was substituted for the old one in the statute giving the power to make rules and regulations. 9 U. S. C. A. (1952 Ed.), Sec. 222.

The immigration authorities, in disregard of the A. P. A., continued to conduct their deportation hearings in accordance with the regulations promulgated by the Commissioner of Immigration. However, the Supreme Court in *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, held that deportation hearings were subject to the provisions of the A. P. A. Sung, an alien seaman who overstayed his shore leave, was ordered deported. Having exhausted his ad-
[fol. 335] ministrative remedies, he applied to the District Court for the District of Columbia for habeas corpus, raising, as his sole ground, the objection that the administrative hearing had not been conducted in conformity with the A. P. A. The Supreme Court, in reversing the District Court and the Court of Appeals, held invalid the hearing conducted pursuant to the Immigration Commissioner's regulations.

As a result of the decision in the Sung case, Congress on September 27, 1950, declared that "Proceedings under law relating to the exclusion or expulsion of aliens shall hereafter be without regard to the provisions of Sections 5, 7, and 8 of the Administrative Procedure Act (5 U. S. C. A., 1004, 1006, 1007)", 64 Stat. 1048. The purpose and effect of this statute was to restore the practice which had existed prior to the Sung decision.

The Commissioner of Immigration and Naturalization, with the approval of the Attorney General, issued amended regulations governing deportation hearings on November 8, 1950. 15 Fed. Reg. 7636 (1950). Provision was made in the amended regulations for the conduct of hearings, and the officer assigned to conduct the hearings was authorized to "administer oaths and affirmations". Moreover, heading the list of the hearing officer's specific duties was the direction that, "At the commencement of the hearing under the warrant of arrest, the hearing officer shall (1) place the alien under oath or affirmation * * * ".

The defendant has cited *Wong Yang Sung* v. *McGrath*, supra, in support of his argument that deportation hearings are governed by the provisions of the Administrative Procedure Act and it is true that this case did so hold, but by the subsequent action of Congress in 1950, the Adminis-
[fol. 336] trative Procedure Act did not thereafter apply to

proceedings relating to the exclusion or expulsion of aliens. However, the Sung case is important here for another pertinent reason. There, in the course of its argument, the government had called attention to the qualifying language of Section 5 of the A. P. A., i.e., that the A. P. A. was applicable "in every case of adjudication required by statute * * *", noting that there was no express requirement for any hearing or adjudication in the deportation sections of the Immigration Act of 1917. The government contended that this omission from the 1917 Act rendered the hearing provisions of the A. P. A. inapplicable. Mr. Justice Jackson, speaking for the Court (339 U. S., at page 49), replied that "* * * the difficulty with any argument premised on the proposition that the deportation statute does not require a hearing is that, without such hearing, there would be no constitutional authority for deportation. The constitutional requirement of procedural due process of law derives from the same source as Congress' power to legislate and, where applicable, permeates every valid enactment of that body". We conclude that one effect of the decision is to read into the Immigration Act of 1917 a constitutional requirement that the Immigration and Naturalization Service conduct hearings in deportation cases.

It seems beyond any serious challenge that the regulations promulgated by the Commissioner of Immigration and Naturalization on November 8, 1950, were pursuant to statutory authority. As we have seen, the Supreme Court held in the Sung case that the 1917 Immigration Act required *some* hearing before deportation could be permitted; Congress had removed deportation hearings from the operation of the Administrative Procedure Act, [fol. 337] in effect restoring them to their previous status to be operated pursuant to the Commissioner's regulations; and, finally, the Commissioner of Immigration and Naturalization possessed the broad power under Section 23 of the 1917 Act, to issue the regulations setting forth the procedure for the necessary deportation hearing. John V. Carney, who administered the oath to the perjuring witness and who did not participate in the investigation preceding the hearing, was designated by the Immigration and Nat-

uralization Service, pursuant to regulations, as an officer to conduct deportation hearings and administer oaths in that connection. Thus, the argument that the hearings in question were not authorized by law, and that the hearing provisions of the Administrative Procedure Act were applicable and were violated, is without basis in law.

It has been decided that a charge of perjury may be based upon false statements given at a hearing held pursuant to administrative regulations. In the language of Mr. Justice Whitaker, speaking for the Court in *United States* v. *Hvass* (1958), 355 U. S. 570, 575, "The phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base". See also 3 Wharton Criminal Law (Anderson Ed. 1957), Sec. 1318, page 685; *United States* v. *Small*, 236 U. S. 405 (1915); *United States* v. *Morehead*, 243 U. S. 607 (1917).

The defendant charges error in failing to direct a verdict in his favor on the ground that the Government did not produce sufficient evidence to prove the essential elements of the crime of subornation of perjury. These elements are concisely stated as follows:

> [fol. 338] "Subornation of perjury consists in procuring or instigating another to commit the crime of perjury."
>
> . . . . . .
>
> "It is essential to subornation of perjury that the suborner should have known or believed, or have had good reason to believe that the testimony given would be false; that he should have known or believed that the witness would testify willfully and corruptly, and with knowledge of the falsity; and that he should have knowingly and willfully induced or procured the witness to give such false testimony."
>
> 70 C. J. S., Perjury, § 79 (1951).

Bearing in mind the essentials of the crime, we turn to consideration of the Government's burden of proof, par-

ticularly the need for corroborative evidence under the so-called "two witness rule" and the "accomplice rule".

Since proof that perjury was actually committed is a necessary element of subornation, the perjury must be established in the same manner as when the perjurer himself is tried. This means that the falsity of the testimony must be proven by the evidence of two witnesses, or by one witness supported by proof of corroborating circumstances. See *Hammer* v. *United States*, 271 U. S. 620 (1926); *Weiler* v. *United States*, 323 U. S. 606 (1945); *Goins* v. *United States*, 99 F. 2d 147 (4 Cir., 1938); 41 Am. Jur., "Perjury", Sec. 67, p. 37. As to the procurement or inducement, however, this element of the crime of subornation need not be so corroborated. *Catrino* v. *United States*, 176 F. 2d 884, 888 (9 Cir., 1949), 41 Am. Jur., "Perjury", Sec. 78, p. 43; *Culwell* v. *United States*, 194 F. 2d 808, [fol. 339] 812 (5 Cir., 1952); *Doan* v. *United States*, 202 F. 2d 674 (9 Cir., 1953).

The general rule that one may not be convicted on the uncorroborated testimony of an accomplice does not apply to procuring or inducing the perjury, as the suborner and the suborned are not accomplices:

> "* * * (S)o far as the rule requiring corroboration of the evidence of an accomplice is concerned as applied to the testimony of the suborned in prosecutions for subornation of perjury, the suborner and suborned are accomplices as regards the perjury itself, but as to other elements of the crime, such as procuring or inducing the perjury, they are not accomplices. * * *"

41 Am. Jur., "Perjury", Sec. 79, p. 44.

Viewing the evidence in the light most favorable to the Government, as this Court is obliged to do here (*Glasser* v. *United States*, 315 U. S. 60, 80 (1942)), the burden of proof has been met and the elements of the crime have been established. The falsity of Kostatos' testimony that he was an American, and of Eleftherios Sitaras' identification of him as an American, was well corroborated. Not only did Kostatos and Eleftherios Sitaras themselves admit their perjury, but the manifest of the S. S. Santa Irene

was convincing evidence that Kostatos was a Greek seaman and not an American. In addition, the Government fully established by the testimony of one Mike Sitaras, a witness who had refused to join the scheme and who did not testify at any of the hearings, that the real John George Sitaras, the man whose identity Kostatos assumed, had been dead for almost thirty years. As to the procurement [fol. 340] of the perjury, the testimony of Kostatos was, of itself, sufficient to convict. In addition, it was bolstered and corroborated by the witness, Mike Sitaras, who testified that he was requested by the defendant to join in the effort to substitute the identity and name of the deceased John George Sitaras for that of Kostatos.

Defendant points to Eleftherios Sitaras' testimony in which he admitted that he lied for Kostatos, and argues that this testimony shows that it was not the defendant who procured Eleftherios Sitaras' perjury, but this argument is without merit. It is true that, after detailing conversations with the defendant in which this witness, Sitaras, claimed that the defendant had pleaded with him to swear that Kostatos was John George Sitaras, this same witness admitted, on cross-examination, that he refused defendant's request to testify falsely at the deportation hearing but did so because of the pleas of Kostatos himself. But his testimony shows that it was the defendant who brought him to the hearing at which he testified; that defendant told him what he should say about Kostatos, placed him on the witness stand and asked the predetermined questions calculated to elicit the testimony which the witness knew to be false.

Defendant alleges error in portions of the Court's charge to the jury: (1) reference to the trial of the defendant and others in Philadelphia, the defendants' plea of nolo contendere and the explanation of the effect of such plea; (2) the statement that "Mr. Petite is still practicing law in Baltimore at this time"; and (3) the instruction given in response to a written question addressed to the Court by the jury—"Does knowledge of how a witness will testify [fol. 341] without actually having instructed him to so say make the defendant guilty?"

As to (1) above, it appears from the record that the fact that the defendant had been tried in Philadelphia was injected into this case by the defense after a warning by the Court and after defense counsel answered, "We'll take that chance, Your Honor". In fact, defense counsel used the Philadelphia trial as the basis of his argument to the jury that his client was being persecuted. Following the delivery of the charge, defendant's attorney said that he had "nothing much of an exception", but that he was not in complete agreement as to the Judge's interpretation of *nolo contendere*. The Judge replied, "If I haven't made that clear, I will be glad to do it, if you will tell me how I should make that clear". Defense counsel declined the offer and stated, "We'll leave it that way. All right". Again the Judge said, "I will be glad to give them any further instructions if you want me to on that point". The final reply was, "No, I won't urge anything more on that, Sir". Certainly the defendant cannot be heard to say that he thus effectively objected. As this Court recently said in *Finn* v. *United States*, 256 F. 2d 304, 308 (4 Cir., 1958): "In the absence of objection at the trial, a claimed error in the charge will be noticed on appeal only in unusual circumstances * * *". Such circumstances are not present here.

As to (2) above, the explanation of the Court's remark is quite simple and the reason well known to defense counsel. One of the jurors met the Judge's law clerk in the courthouse elevator following testimony as to the defendant's good character as a lawyer and inquired whether the defendant was still practicing law. The law clerk did not answer the question and properly reported the incident to [fol. 342] the Judge. At the close of the evidence and before argument, the Judge called counsel to the bench and advised them of the conversation between juror and law clerk, stating, "I am telling counsel for both sides this so that they may know that that question was in the juror's mind and they can pitch their arguments accordingly. If it is mentioned by either counsel in the argument, I think that along with the definition of nolo contendere that I will give to the jury, that I should state as a fact that Mr. Petite is still practicing law". Defense counsel made no objection to the Judge's suggestion, gave no hint that it

would not meet with his approval, and neither made objection nor took exception following the delivery of the charge. See *Finn* v. *United States*, supra.

As to (3) above, in answering the question the Court told the jury:

"Now, let me break it down. Knowledge of how the witness will testify does not make a defendant guilty. On the other hand, a defendant may be guilty without having instructed the witness what to say.

"A lawyer may be guilty of subornation of perjury even though he has not instructed the witness to say so if he knows that the testimony the witness is going to give is false and if he knows that the witness knows that it is false and yet he causes or induces the witness to do it and puts the witness on the stand, and the witness does so testify; then the defendant may be guilty.

"But mere knowledge of how the witness will testify is not of itself sufficient to make him guilty. He must, within the language I gave you, cause or induce.

[fol. 343] "Is that clear?

"That is, mere knowledge of how the witness will testify is not enough. On the other hand, the Government does not have to prove that he instructed him how he should testify.

"It is enough if the lawyer, the defendant, in this case, knows that the testimony that the witness is going to give is not true and knows that the witness knows it, and still puts him on the stand to give it and causes and induces him to do it."

Defense counsel excepted, explaining in the following language:

"I mean the answer to the Foreman's question, I feel it should be, that it is only subornation of perjury when the person who is charged with subornation of perjury causes, induces or instructs the person to so testify.

"Mere knowing that the person has testified or would testify unlawfully or commit perjury is not subornation of perjury."

However, throughout the Judge's charge he defined subornation of perjury as the procuring of perjured testimony.

He referred to "the alleged inducement by the defendant of the witnesses to commit perjury" and he instructed that "To procure and to suborn, means to contrive or to induce, to instigate. That is what we mean by procuring or suborning * * *. It is a question of whether the defendant did it and whether he did it knowingly and wilfully". The jury was told:

"The principal dispute in the case is whether or not on [fol. 344] the one hand George Kostatos saw the defendant, George Petite, before he was arrested, and if so, whether they agreed upon the story that George Kostatos was to tell knowing it to be false, and that George Petite assisted in arranging for others to support that story knowing it to be false; or on the other hand whether George Kostatos made up the story himself and did not see George Petite until after he had told the story once to the Immigration and Naturalization Service when he made the statement on October 23rd and that he deceived Petite into believing that it was true."

Viewing the charge as a whole, and looking at the entire answer to the jury's question, the conclusion is inescapable that the jury received an accurate, complete and impartial explanation of the necessary elements of the crime of subornation of perjury and could not have been misled or confused thereby to the defendant's prejudice.

Certain assignments of error in the admission of evidence are based upon the defense theory and argument that neither the deportation hearing of February 14, 1952, nor June 16, 1952, was a proper "judicial proceeding" and that the oath was not taken before a competent tribunal in a case in which a law of the United States authorizes an oath to be administered. Having reached a decision contrary to this theory, these alleged errors need no further discussion.

The defendant charges other errors in the admission and exclusion of evidence which were noted in his brief but not emphasized in oral argument. However, they have been reviewed and considered and, perceiving no prejudicial [fol. 345] error, we deem it unnecessary to burden this already lengthy opinion with additional comments.

For the reasons stated herein, the conviction of the defendant on two counts of subornation of perjury is

Affirmed.

[fol. 347]

IN UNITED STATES COURT OF APPEALS,
FOR THE FOURTH CIRCUIT

No. 7694

GEORGE B. PETITE, Appellant,

—vs.—

UNITED STATES OF AMERICA, Appellee.

Appeal From the United States District Court for the District of Maryland.

JUDGMENT—Filed and Entered January 5, 1959

This Cause came on to be heard on the record from the United States District Court for the District of Maryland, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

Morris A. Soper, United States Circuit Judge; Clement F. Haynsworth, Jr., United States Circuit Judge; H. S. Boreman, United States District Judge.

January 12, 1959, motion of appellant for stay of mandate filed.

ORDER EXTENDING TIME FOR FILING PETITION FOR REHEARING AND STAYING MANDATE—Filed and Entered January 12, 1959

Upon the application of counsel for the appellant, and for good cause shown,

It is ordered that the time within which the appellant may file a petition for a rehearing in the above entitled case be, and it is hereby, extended for a period of ten (10) days from January 15, 1959.

[fol. 349] It is further ordered that the mandate be, and it is hereby, stayed pending the timely filing of the petition for a rehearing.

January 12, 1959.

Morris A. Soper, United States Circuit Judge.

[fol. 350]

[File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Title omitted]

PETITION FOR RE-HEARING—Filed January 31, 1959

Original petition filed January 23, 1959.

Now comes the Appellant, George B. Petite, in the above entitled cause, through his Attorneys, Bernard J. Flynn and Louis R. Milio, and respectfully prays for a re-hearing of the above-entitled cause, and as reasons therefor respectfully says:

1. The opinion in this case is based in part upon the Act of September 27, 1950 passed by Congress, which stated that the Administrative Procedure Act did not apply to immigration matters, and in part upon the Amended Regulations adopted by the Commissioner of Immigration and Naturalization, with the approval of the Attorney General, covering deportation hearings, which was adopted on November 8, 1950 (15 Fed. Reg. 7636 (1950)).

2. The Appellant respectfully maintains that he never argued that the Administrative Procedure Act applied to [fol. 351] his case. In fact, he argued in his brief in this case that the said Act did not apply.

He stated, however, in his brief that there was no procedure that had been legally enacted which permitted the hearing before the administrative officer in this case, or which permitted him to administer an oath.

Wherefore, he maintained and still maintains the entire hearing was a nullity and the charge of either perjury or subornation of perjury could not be upheld.

3. The opinion of this Honorable Court states that provision for a hearing by the said administrative officer existed by virtue of the above referred to Order of November 8, 1950, adopted by the Commissioner of Immigration and Naturalization, with the approval of the Attorney General (15 Fed. Reg. 7636 (1950)).

The Appellant respectfully maintains that the said Order, insofar as it provides for a hearing, is totally void, as it attempts to set up a complete procedure governing a judicial hearing akin to the Administrative Procedure Act, and to the Rules of Federal Procedure, without there being any statutory basis or authorization therefor. The said Order gives as its statatory basis Section 23, 39 Stat. 892, as amended; Sec. 24, 43 Stat. 166; Section 37, 54 Stat. 675; 8 U. S. C. and Suppl. 102, 222, 458.

An examination of the above statutes reveals that not one of them is a lawful basis for the said Order.

The Act of 1917, whose purpose was to regulate immigration of aliens to and the residence of aliens in the United States, 29 of 39 Stat., Sec. 23 provided as follows:

> "That the Commissioner General of Immigration shall perform all his duties under the direction of the Secretary of Labor. Under such direction he shall have [fol. 352] charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder; he shall establish such rules and regulations, prescribe

> such forms of bonds, reports, entries, and other papers, and shall issue from time to time such instructions not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act . . . The duties of commissioners of immigration and other immigration officials in charge of districts, ports, or stations shall be of an administrative character, to be prescribed in detail by regulations prepared under the direction or with the approval of the Secretary of Labor. . . ."

It is plain that the above statute, which in itself was subsequently amended, was no basis for the Order adopted in 1950 as aforesaid.

The said Act of 1917 did not authorize the Commissioner of Immigration and Naturalization to enact a complete system of procedure governing a judicial hearing before an administrative officer.

The Act of 1924, Chapter 190, whose purpose was to limit the immigration of aliens into the United States provided in Section 24, p. 166 of 43 Stat.:

> "The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this Act; but all such rules and regulations, insofar as they relate to the administration of the Act by consular officers, shall be prescribed by the Secretary of State on the recommendation of the Secretary of Labor."

Again, there is nothing in this Act of 1924 which authorizes the Commissioner of Immigration and Naturalization to enact a complete system of procedure governing a judicial hearing before an administrative officer.

[fol. 353] The Act of 1940 which was passed just before the entrance of the United States into World War II, was intended to prevent certain subversive activities and to amend certain provisions of the law as to admission and deportation of aliens and to require fingerprinting of aliens. It was Chapter 439 of the Act of 1940, 54 Stat., Title 3, Sec. 37(a) of which provided:

"(a) The Commissioner, with the approval of the Attorney General, is authorized and empowered to make and prescribe, and from time to time to change and amend, such rules and regulations not in conflict with this Act as he may deem necessary and proper in aid of the administration and enforcement of this title (including provisions for the identification of aliens registered under this title); except that all such rules and regulations, insofar as they relate to the performance of functions by consular officers or officers or employees in the Postal Service, shall be prescribed by the Secretary of State and the Postmaster General, respectively, upon recommendation of the Attorney General. The powers conferred upon the Attorney General by this Act and all other powers of the Attorney General relating to the administration of the Immigration and Naturalization Service may be exercised by the Attorney General through such officers of the Department of Justice, including officers of the Immigration and Naturalization Service, attorneys, special attorneys, and special assistants to the Attorney General, as he may designate specifically for such purposes."

The Act of 1940 likewise did not authorize the Commissioner of Immigration and Naturalization to enact a complete system of procedure governing a judicial hearing before an administrative officer.

The said Acts of 1917, 1924 and 1940 are referred to in 15 Fed. Reg. 7636 (1950), as Section 23, 39 Stat. 892, as amended; Sec. 24, 43 Stat. 166; Section 37, 54 Stat. 675, as [fol. 354] the basis for the said Order, and as shown above, they are not a lawful basis for the same.

There was, in fact, at the time the alleged wrong with which the Appellant was charged was committed, no statute or lawful regulation or order permitting the officer who conducted the hearing in the deportation case to conduct the said hearing or to administer the oath without which, as stated, there was no basis for a charge of either perjury or subornation of perjury.

It is to be noted again that the hearing in which the perjury and subornation of perjury were allegedly com-

mitted involved an attempt to deport from the United States an alien who had allegedly come into the country without authority and had remained therein for a substantial length of time.

No statute and no lawful regulation or order authorized the hearing officer in that case to conduct the hearing or to administer the oath.

Wherefore, in accordance with Section 4 of Rule 30 of this Honorable Court, the Appellant respectfully states that he is filing this Motion in all good faith and that the same is not intended for delay, and he requests a full oral rehearing of his case.

Respectfully submitted,

Bernard J. Flynn, Louis R. Milio, Ginsberg & Ginsberg, Attorneys for the Appellant.

[fol. 355] I hereby certify that personal service was made of the above on January 22nd, 1959, upon the Honorable Leon H. A. Pierson, District Attorney for Maryland.

Louis R. Milio, Co-Attorney for the Appellant.

Service of copy of the foregoing Petition for Re-Hearing is hereby admitted this 22nd day of January, 1959.

/s/ Leon H. A. Pierson, per J. A., United States Attorney.

[fol. 356]

IN UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Title omitted]

Appeal from the United States District Court for the District of Maryland, at Baltimore.

ORDER DENYING REHEARING—Filed and Entered February 19, 1959

This Court, having on January 5, 1959, rendered its decision affirming the judgment of the said District Court appealed from in the above entitled case, and the appellant having on January 23, 1959, filed a petition for a rehearing of the said case, and the same having been fully considered:

It is ordered by this Court that the rehearing asked for be, and the same is hereby, denied.

Morris A. Soper, United States Circuit Judge; Clement F. Haynsworth, Jr., United States Circuit Judge; H. S. Boreman, United States District Judge.

February 25, 1959, petition of appellant for a stay of mandate filed.

ORDER STAYING MANDATE—Filed February 28, 1959

Upon the application of the appellant, by his counsel, and for good cause shown,

It is ordered that the mandate of this Court in the above entitled case be, and it is hereby, stayed pending the ap[fol. 358] plication of the appellant in the Supreme Court of the United States for a writ of certiorari to this Court, provided the application for a writ of certiorari is filed in the Supreme Court within 30 days from February 19, 1959.

February 26, 1959.

Simon E. Sobeloff, Chief Judge, Fourth Circuit.

[fol. 360] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 362]

SUPREME COURT OF THE UNITED STATES

No. 784—October Term, 1958.

GEORGE B. PETITE, Petitioner,

—vs.—

UNITED STATES.

ORDER ALLOWING CERTIORARI—June 15, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office-Supreme Court, U.S.
FILED
MAR 20 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. [redacted]45

GEORGE B. PETITE, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No.

GEORGE B. PETITE, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner respectfully asks this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit, which affirmed petitioner's conviction in the United States District Court for the District of Maryland on two counts of subornation of perjury.

OPINIONS BELOW

The opinion of the District Court for the District of Maryland (At. A. 5-9)* is reported at 147 F. Supp. 791. The opinion of the Court of Appeals has not yet been reported. Both opinions are annexed hereto as an Appendix (App. 1a-21a, *infra*).

JURISDICTION

The judgment of the Court of Appeals was entered on January 5, 1959 (App. 21a). An order denying rehearing was entered on February 19, 1959 (App. 22a). The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the double jeopardy clause forbids conviction for subornation of perjury when the defendant and the alleged perjurers have already been convicted under a conspiracy indictment charging the same perjury as an objective and as an overt act of the conspiracy.

STATUTES INVOLVED

Title 18, United States Code:

> "§ 371. Conspiracy to commit offense or to defraud United States.
>
> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the

* Citations to record and appendices in the petition have been abbreviated as follows:

Appellant's Appendix in Court of Appeals—At. A.
Appendix to Petition for Writ of Certiorari—App.

object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

* * *

"§ 1001. Statements or entries generally.

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

* * *

"§ 1621. Perjury generally.

"Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both.

* * *

"§ 1622. Subornation of perjury.

"Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both."

STATEMENT

Petitioner, a member of the bar of the State of Maryland, represented one Georgios Kostatos in a deportation proceeding in 1952 (At. A. 30). Kostatos, a Greek seaman who had remained in Baltimore when his ship sailed, was being held for deportation. His defense, and the one asserted by petitioner, was that he was an American citizen, that he was born in Pennsylvania and that he had spent most of his life in Greece. In the course of this proceeding, three separate hearings were held by officials of the Immigration and Naturalization Service. Two hearings were in Baltimore, on February 14, 1952, and June 16, 1952, and one was in Philadelphia commencing on April 24, 1952. During the course of these hearings, sworn testimony and affidavits were received.

On August 31, 1954, two indictments were returned by the Grand Jury for the Eastern District of Pennsylvania. The first, No. 17934, was in two counts and charged the petitioner and five others with conspiracy "to make false, fictitious and fraudulent statements to an agency of the United States, . . . the Immigration and Naturalization Service" and with conspiracy "to defraud the United States and an agency thereof, to wit: the Immigration and Naturalization Service;" (At. A. 10-13). The second indictment, No. 17946, charged the petitioner with subornation of perjury at the Philadelphia hearing of April 25, 1952 (At. A. 14-18). Two of the co-conspirators in the first indictment were "Georgios Kostatos" and "Louis Sitaras, of Baltimore,"* and two of the overt acts charged in each count were:

---

*There are two people involved named Louis Sitaras. The Courts below referred to them as "Louis Sitaras of Baltimore" and "Louis Sitaras of Marcus Hook." Only the actions of Louis Sitaras of Baltimore are involved in this petition.

"*Overt Act No. 6.* On or about February 14, 1952, Georgios Kostatos, also known as George Modestos Kostatos did make a certain sworn statement at Baltimore, Maryland.

"*Overt Act No. 7.* On or about June 16, 1952 at Baltimore, Maryland, Louis Sitaras, of Baltimore, Maryland, did make a certain sworn statement."

On January 19, 1955, petitioner and all co-conspirators except Georgios Kostatos pleaded "not guilty" (At. A. 24, 26). On February 16, 1955, Georgios Kostatos pleaded "guilty" and three of the co-conspirators changed their pleas to "guilty" (At. A. 26). The fourth co-conspirator changed his plea to "guilty" on September 19, 1955 (At. A. 27). On September 19, 1955, petitioner's trial on all charges began and, at its conclusion, he was permitted to plead "nolo contendere" to the first count of the conspiracy indictment (At. A. 27). All other charges against petitioner were dismissed (At. A. 24, 28). On November 10, 1955, all other co-conspirators were allowed to withdraw their "guilty" pleas to the second count, and that count was dismissed as to them also (At. A. 28). Under Count 1 of the conspiracy indictment, petitioner was sentenced to two months imprisonment (which has been served) and a $500.00 fine (At. A. 28).

Then, on August 21, 1956, the Grand Jury for the District of Maryland indicted petitioner on two counts of subornation of perjury arising from the Baltimore hearings in the same case (At. A. 1-4). The first count charged that he had suborned Georgios Kostatos to testify falsely in Baltimore on February 14, 1952, and the second that he had suborned Eleftherios Sitaras ("Louis Sitaras of Baltimore") to testify falsely in

Baltimore on June 16, 1952. Over petitioner's objection that he was being placed twice in jeopardy, the District Court denied a motion to dismiss the indictment. Petitioner pleaded "not guilty" but was convicted and his conviction has been affirmed by the Court of Appeals.

REASONS FOR GRANTING THE WRIT

Petitioner respectfully submits that the net effect of his indictment, trial, and conviction in the Eastern District of Pennsylvania, when coupled with the subsequent indictment and trial in Maryland, placed him twice in jeopardy for the same offense. The Pennsylvania conspiracy indictment charged petifioner and five others with conspiracy to submit false statements. Two of the overt acts alleged to have been committed in furtherance of this conspiracy were those of Georgios Kostatos and Louis Sitaras in making sworn statements in Baltimore on February 14 and June 16, 1952. These are the statements made to the Immigration and Naturalization Service—the same statements which are the subject of petitioner's Maryland indictment for subornation.

It is basic that the act of one conspirator, committed in furtherance of the conspiratorial objective, is, in law and in fact, the act of each other co-conspirator. *United States* v. *Sansone*, 231 F. 2d 887, certiorari denied, 351 U.S. 987; see *Braverman* v. *United States*, 317 U.S. 49. Petitioner is thus clearly implicated in Overt Acts 6 and 7, the ones which, in effect, charge that Kostatos and Sitaras committed perjury at the Baltimore hearings on February 14 and June 16, 1952. This becomes even more apparent in view of the fact that both Kostatos and Sitaras pleaded guilty to the

Pennsylvania conspiracy indictment, thereby admitting all the factual averments contained therein. *Lindsay* v. *United States*, 134 F. 2d 960, certiorari denied, 319 U.S. 763; *Kahl* v. *United States*, 204 F. 2d 864. Petitioner was, therefore, fully involved, by the Philadelphia indictment and the subsequent events thereon, in the Baltimore perjury. His agreement to plead "nolo contendere" to the first count of the conspiracy indictment, the dismissal of all other charges, and his conviction and sentence completed the Philadelphia phase of his criminal trials.

Some months after the completion of the sentence meted out by the District Court in Philadelphia, petitioner was again indicted, this time in Maryland, for suborning Kostatos and Sitaras to perjure themselves at the February 14 and June 16, 1952 hearings conducted by the Immigration and Naturalization Service in Baltimore. A timely motion directed to the indictment on the grounds of double jeopardy was denied. Petitioner was ultimately convicted and his conviction was affirmed by the Court of Appeals.

It is, of course, well settled that in most instances a person may properly be convicted for both conspiracy and the substantive offense which was the object of the conspiracy. *Pereira* v. *United States*, 347 U.S. 1; *United States* v. *Bayer*, 331 U.S. 532; and see *Gore* v. *United States*, 357 U.S. 386. As stated by this Court in *Pereira*, *supra*:

> "It is settled law in this country that the commission of a substantive offense and a conspiracy to commit it are separate and distinct crimes, and a plea of double jeopardy is no defense to a conviction for both. See *Pinkerton* v. *United States*, 328 U.S. 640, 643-644, and cases cited therein.

> Only if the substantive offense and the conspiracy are identical does a conviction for both constitute double jeopardy." (347 U.S. at 11)

For reasons to be stated herein, petitioner asserts the substantial identity of the two indictments and further asserts that the Maryland indictment acts to place him twice in jeopardy for the same offense.

The rule set forth in *Pereira* is subject to at least one well recognized exception. There are certain classes of crimes in which such duplication of offenses and punishments is never permitted. When the agreement of two persons is necessary for the completion of the substantive crime or when the substantive crime involves the same community of purpose as would the conspiracy to commit the offense, it is not proper to indict and convict for both the conspiracy and the substantive offense. Typical illustrations of this type of offense, acknowledged not only by state and lower federal courts, but by this Court as well, are adultery and fornication, *State* v. *Law*, 189 Iowa 910, 179 N.W. 145; bribery, *United States* v. *Dietrich*, 126 Fed. 664 and *United States* v. *Sager*, 49 F. 2d 725; unlawful rebates, *United States* v. *New York Cent. & H.R.R. Co.*, 146 Fed. 298. Bigamy and dueling are two other such offenses which have been recognized by this Court. See *United States* v. *Holte*, 236 U.S. 140, at 145. These are the type of crimes in which the actual concurrence of two persons is absolutely necessary to the commission of the substantive offense. The cases all have one common denominator. There must, in each, be a concert of action between the two principal actors—the adulterers or bigamists, the duelists, the briber and the bribed. See also *Gebardi* v. *United States*, 287 U.S. 112; *United States* v. *Katz*, 271 U.S. 354.

So, too, with subornation of perjury. This is another offense which falls within that class of cases in which, since this concert of action must be present, two separate crimes cannot properly be constructed from the single offense. There can be no subornation of perjury without a perjurer, *Hammer* v. *United States,* 271 U.S. 620, and a suborner. The actual cooperation and interaction between the two must always be present, just as in the cases of adultery, bribery and dueling. It is important to recognize that petitioner's case is not a situation in which two or more persons conspire to suborn certain others. Such an indictment might be permissible. *Williamson* v. *United States,* 207 U.S. 425. Petitioner, however, was charged with suborning Kostatos and Sitaras, two of his co-conspirators in the Philadelphia indictment, thus bringing his cause squarely within the exception to the rule which permits two separate prosecutions for conspiracy and the substantive offense.

Against this background, the offenses charged to petitioner can more properly be assessed. By the very nature of the crime involved, petitioner could not have conspired with Kostatos and Sitaras and suborned them at the same time. Yet, that is, in effect, what the Philadelphia charges sought to establish. The Government, in Philadelphia, sought to and did punish a group of individuals for various acts of perjury committed at hearings conducted by the Immigration and Naturalization Service. A mere reading of the Philadelphia indictments reveals the Government's idea of who the principal actor was. Count 1 of the Philadelphia conspiracy indictment involves petitioner, specifically or by fair inference, in five of eight overt acts—all having to do with offering affidavits or testimony of co-conspirators. Count 2 of the same indict-

ment adds an additional act—the attempt to procure a false baptismal certificate. In addition, petitioner was charged with three counts of suborning perjury in Philadelphia. There was thus a clear attempt to label him as the pivot of the conspiracy, the attorney who arranged false records and suborned witnesses on behalf of a client. The guilty pleas of all his associates, their assistance in his prosecution and finally his agreement to plead "nolo contendere" and his conviction thereon, served to satisfy the Government, for all other counts against him were then dismissed.

Since no such offense as conspiracy to suborn perjury can be supported, the actual import of the Philadelphia trials must have been to render an adjudication of petitioner's guilt on the substantive offense. This was at least impliedly recognized by the United States Attorney in his motion to dismiss the Philadelphia subornation indictments; for he said:

> "It is believed that the aforesaid conspiracy charge is an adequate basis upon which the court can impose a substantial sentence." (At. A. 22-23)

The Government, in effect, was asking the court to recognize petitioner's grave involvement and impose an appropriate penalty.

The net effect of all of these actions was to adjudicate petitioner's responsibility for the substantive crimes involved and punish him accordingly. When this was coupled with his subsequent indictment for these same substantive crimes, the petitioner was thus placed twice in jeopardy for the same offense.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

EDWARD BENNETT WILLIAMS
RAYMOND W. BERGAN
Counsel for Petitioner

March, 1959

APPENDIX

APPENDIX

Opinion and Order of the United States District Court for the District of Maryland

Thomsen, Chief Judge

George B. Petite, indicted on two counts for subornation of perjury, in violation of 18 U. S. C. 1622, seeks dismissal of the indictment on the ground of double jeopardy.

On August 21, 1956, the Grand Jury for the District of Maryland returned an indictment against Petite charging him on two counts with subornation of perjury. The first count charges that Petite suborned Georgios Modestou Kotsatos to commit perjury before the Immigration & Naturalization Service (INS) on February 14, 1952, at Baltimore. The second count charges that Petite suborned Louis Sitaras of Baltimore, Maryland, to commit perjury before the INS on June 16, 1952, at Baltimore.

Previously, the Grand Jury for the Eastern District of Pennsylvania had returned an indictment (No. 17934) against Petite and five other defendants, including Kotsatos and Sitaras. The first count of that indictment charged the defendants with conspiring to make false, fictitious and fraudulent statements to officers of the INS, in violation of 18 U. S. C. 371 and 1001. Among the overt acts charged in the count were: No. 6, that "on or about February 14, 1952, Georgios Kotsatos, also known as George Modestou Kotsatos, did make a certain sworn statement at Baltimore, Maryland"; and No. 7, that "on or about June 16, 1952, at Baltimore, Maryland, Louis Sitaras of Baltimore, Maryland, did make a certain sworn statement". The second count of Pennsylvania indictment No. 17934 charged the same defendants with conspiring to defraud the United States and the INS for the purpose of preventing the deportation of Georgios Kotsatos, in violation of 18 U. S. C. 371. Overt acts Nos. 6 and 7 charged in the second count of that indictment were the same as overt acts Nos. 6 and 7

charged in the first count. Overt act No. 3 in both counts charged Petite with offering in evidence in the deportation hearing at Baltimore on February 14, 1952, affidavits obtained from Louis Sitaras, of Marcus Hook, Pennsylvania (not the Louis Sitaras referred to in the Maryland indictment), Peter S. Pahides and Gustav Katsaros. Overt act No. 10 in the second count of the Pennsylvania indictment charged Petite with requesting the issuance of a certain baptismal certificate.

After trial in the United States District Court for the Eastern District of Pennsylvania, Petite was convicted upon his plea of nolo contendere on the first count of the indictment and was sentenced to two months' imprisonment and a fine of $500. On the motion of the United States Attorney, the second count of the indictment was dismissed.

The Grand Jury for the Eastern District of Pennsylvania had also returned a three count indictment against Petite (No. 17946), charging him with subornation of perjury. The three counts charged that Petite suborned Pahides, Katsaros and Louis Sitaras of Marcus Hook, Pennsylvania, respectively, to commit perjury before the INS on April 25, 1952, at Philadelphia. Following the trial in the Eastern District of Pennsylvania, this indictment was dismissed by the court, upon the motion of the United States Attorney.

The motion to dismiss the Maryland indictment alleges that a trial on the Maryland indictment will place Petite in double jeopardy because of the prior proceedings in the Eastern District of Pennsylvania. The controlling authorities, however, do not support this contention. "It is settled law in this country that the commission of a substantive offense and a conspiracy to commit it are separate and distinct crimes, and a plea of double jeopardy is not defense to a conviction for both. See *Pinkerton* v. *United States*, 328 U. S. 640, 643-644, and cases cited therein. Only if the substantive offense and the conspiracy are identical

does a conviction for both constitute double jeopardy." *Pereira* v. *United States*, 347 U. S. 1, 11.

The defendant contends that the charge in each of the indictments is identically the same. But an examination of the three indictments shows that the charges are not identical. "It has been long and consistently recognized by the Court that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses. The power of Congress to separate the two and to affix to each a different penalty is well established. *Clune* v. *United States*, 159 U. S. 590, 594-595." *Pinkerton* v. *United States*, 328 U. S. 640, 643.

No doubt, if Petite did procure Kotsatos and Sitaras of Baltimore to testify falsely, as charged in the Maryland indictment, he did so in furtherance of the conspiracies charged in counts 1 and 2 of Pennsylvania indictment No. 17934. But that does not make the offenses identical. "* * * the charge of conspiracy requires proof not essential to the convictions on the substantive offenses — proof of an agreement to commit an offense against the United States — and it cannot be said that the substantive offenses and the conspiracy are identical, any more than that the two substantive offenses are identical." *Pereira* v. *United States*, *supra*, pp. 11-12. See *Williamson* v. *United States*, 207 U. S. 425, 446 et seq.; *Outlaw* v. *United States*, 5 Cir. 81 F. 2d 805, 806.

In the case we are considering the overt acts charged in the conspiracy indictment in Pennsylvania were the giving of false testimony by Kotsatos and Sitaras of Baltimore, and the offering in evidence by Petite of false affidavits made by Pahides, Katsaras and Sitaras of Marcus Hook. The subornation of the witnesses by Petite was not charged as an overt act or otherwise referred to in the conspiracy indictment; even if it had been, that would not entitle Petite to claim double jeopardy. *Pinkerton* v. *United States*, *supra*, at 644.

The essence of the conspiracy charge was the agreement. *Pereira* v. *United States, supra,* pp. 11-12; *Williamson* v. *United States, supra,* p. 446 et seq.; *United States* v. *Bayer,* 331 U. S. 532, 542; the essence of the charge in the case pending in this court is that Petite procured and suborned Kotsatos and Sitaras to commit perjury. To "procure" and to "suborn" mean to contrive, to cause, to induce to instigate; and agreement is not a necessary element, although frequently present. "To constitute subornation of perjury, which is an offense at common law, the party charged must procure the commission of the perjury, by inciting, instigating, or persuading the witness to commit the crime. Perjury must have been actually committed, and this must appear in the indictment." *Wharton's Criminal Law,* Vol. 2, 12th ed., sec. 1595, pp. 1844-1845.

In the present case Petite is charged with subornation of perjury, which, as we have seen, does not require proof of any agreement between the suborner and the perjurer, but does require proof of the commission of the perjury. In each count of case No. 17934, in the Eastern District of Pennsylvania, Petite and five others were charged with conspiracy, which did not require proof of any subornation by Petite nor of any actual perjury by anyone, but did require proof of an agreement by the parties to carry out the purposes of the conspiracy, and some overt act in furtherance thereof.

The conspiracy charge and the subornation charge are not rendered identical because two people—the suborner and the perjurer—were necessarily involved in this, as in every, subornation charge. At least two people must be involved in every conspiracy case; and frequently one of the conspirators aids or abets another in committing one of the overt acts. If that overt act is also charged as a substantive offense in the same or a different indictment, the aider and abettor may be charged with and punished for the substantive offense, even though he is also charged

and punished as a conspirator. *Pereira* v. *United States*, *supra*.

The question in this case is not whether a suborner and a perjurer may properly be convicted of conspiracy, without proof of other facts or the conviction of other conspirators. Cf. *Gebardi* v. *United States*, 287 U.S. 112, 122-123; *Williamson* v. *United States*, *supra*. Nor is it a case where the government is attempting to carve a single conspiracy into smaller conspiracies, so that a number of prosecutions may be had for the same offense. *Braverman* v. *United States*, 317 U.S. 49. Each of the subornations alleged in the indictments in the instant case, and in case No. 17946 in the Eastern District of Pennsylvania, was a separate offense, for which Petite, if guilty, was subject to separate punishment. And if Petite also conspired with the alleged perjurers for the purpose set out in either of the counts of the indictment in case No. 17934, and some overt act was done in pursuance thereof, that, too, was a separate offense. *Pinkerton* v. *United States*, *supra*. No double jeopardy has been shown.

The motion to dismiss the indictment is hereby denied.

ROSZEL C. THOMSEN,
Chief Judge, U. S. District Court.

Opinion of the United States Court of Appeals for the Fourth Circuit

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7694

GEORGE B. PETITE, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

BOREMAN, District Judge:

This is an appeal by George B. Petite, a member of the Bar of Baltimore City, from a sentence of inprisonment imposed by the United States District Court for the District of Maryland, the appellant having been convicted by a jury of the crime of subornation of perjury on two separate counts of an indictment.

The first count of the indictment charged that the appellant, hereinafter referred to as the defendant, procured Georgios Modestou Kostatos to commit perjury in a hearing conducted by the Immigration and Naturalization Service on February 14, 1952. The second count charges that the defendant procured Eleftherios Sitaras, of Baltimore, Maryland, to commit perjury in a hearing conducted by the Immigration and Naturalization Service on June 16, 1952. Both hearings were in Baltimore, Maryland, and were held in connection with a deportation proceeding against Kostatos, the perjurer named in the first count.

On October 12, 1951, Georgios Modestou Kostatos, a native of Greece and a Greek citizen, arrived at the Port

of Baltimore as a crewman on the S. S. Santa Irene. When the ship left Baltimore the next day, Kostatos was not aboard and, ten days later, on October 23, 1951, he was arrested on a warrant charging that "at the time of entry, he was an immigrant not in possession of a valid immigration visa". Kostatos appeared at a deportation hearing on February 14, 1952, to show cause why he should not be deported. The defendant entered a formal appearance in the case as counsel for Kostatos, and the defense against deportation was that Kostatos was an American citizen and not an immigrant. John V. Carney, a Deportation Examiner, was the presiding officer and administered the oath to the witness Kostatos.

When questioned by the defendant, as his counsel, Kostatos claimed that his real name was John George Sitáras and that he was the son of Georgios and Maria Spanos Sitaras; that he was born in Chester, Pennsylvania, in 1919; that he was baptized in Philadelphia in 1920; that when he was four or five years old, his parents sent him to Greece because he was sick, and that he grew up in Greece, reared by his grandfather there. In explaining his reason for using the name "Kostatos" as a crewman, he stated that he had to show a military discharge to get employment on the ship. He asserted that he had had no military service and that he used the papers of a friend named Kostatos. Following his testimony, the hearing was adjourned.

The hearings were resumed in Philadelphia on April 24, 1952, before a different Deportation Examiner, the purpose of that hearing being the taking of depositions of certain people who resided in Pennsylvania and who appeared in Philadelphia as witnesses for Kostatos.

On June 16, 1952, a third hearing was held in Baltimore, at which the same John V. Carney presided and administered the oaths; his formal title this time being that of "Hearing Officer". The defendant called as a witness

Eleftherios Sitaras, also known as Louis Sitaras.[1] This witness testified that he was an American citizen but that he was born in Greece, where he lived until he was eleven years old. He said that, while in Greece, he attended school with Kostatos and gave testimony to bolster his identification of Kostatos as John Sitaras.

The indictment here was returned on August 21, 1956. Previously, the defendant and five others, including Kostatos and Sitaras (of Pennsylvania), were indicted in the Eastern District of Pennsylvania and charged in two counts with conspiring to make false, fictitious and fraudulent statements to officers of the INS, and with conspiring to defraud the United States and the INS for the purpose of preventing the deportation of Georgios Kostatos.

Another indictment against the defendant, in the Eastern District of Pennsylvania, charged him with subornation of perjury in connection with testimony of witnesses, including Louis Sitaras (of Pennsylvania), at the Philadelphia hearing. The defendant, after the trial in the United States District Court for the Eastern District of Pennsylvania, was convicted upon his plea of nolo contendere on the first count of the conspiracy indictment, sentenced to pay a fine and to imprisonment for two months. On motion of the United States Attorney, the second count of the conspiracy indictment and the indictment charging subornation of perjury were dismissed.

At the trial of the defendant in the Maryland District Court, Kostatos repudiated his former statements and admitted his identity, testifying that he was born in Greece and that the defendant had told him to claim to be John George Sitaras. The evidence disclosed that John George

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[1] Two men in this case are known as Louis Sitaras. One lives in Marcus Hook, Pennsylvania, and testified at the Philadelphia hearing but not in Baltimore. The one to which reference is here made lives in Baltimore and testified at the second Baltimore hearing but did not testify in Philadelphia.

Sitaras, an American citizen, had been dead for several years, a fact known to the defendant.

One of the questions for determination here arises because of the lower court's refusal to dismiss the Maryland indictment, the defendant urging that a trial on the Maryland indictment would place defendant Petite in double jeopardy because of the prior proceedings in the Eastern District of Pennsylvania in violation of the Fifth Amendment to the Constitution of the United States. Chief Judge Thomsen, of the District Court of Maryland, rendered his well-considered and able decision, *United States* v. *Petite*, 147 F. Supp. 791, holding that "No double jeopardy has been shown". We approve the decision as reported.

In asserting that the District Court erred in denying the claim of double jeopardy, counsel for the defendant point to several decisions of the Supreme Court of the United States involving double jeopardy, including *Pereira* v. *United States*, 347 U. S. 1 (1954); *United States* v. *Bayer*, 331 U. S. 532 (1947); *Gore* v. *United States*, 357 U. S. 386 (1958); *Hoag* v. *New Jersey*, 356 U. S. 464 (1958); and *Ciucci* v. *Illinois*, 356 U. S. 571 (1958). These cited decisions were by a divided court, and counsel for the defendant persistently urged this court to disregard the majority opinions in these cases and to follow the dissenters. This court is bound by the decisions of the Supreme Court whether rendered by the full court or a divided court.

The defendant next points to the statutes defining perjury and subornation of perjury.[2] He contends that the

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[2] Title 18 U. S. C., Sec. 1621, 62 Stat. 773:

"Perjury generally.

"Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, wilfully and

Immigration Act of 1917, Sec. 16, 39 Stat. 874, 885, 8 U.S.C., Sec. 152, provided for physical and mental examination of aliens coming into the United States, and although Immigrant Inspectors were authorized to make the examination and to administer an oath in so doing, that section was limited in its effect to persons just entering the country. He argues: That Section 17 of the same Act, 39 Stat. 874, 887, 8 U.S.C., § 153, provided for boards of special inquiry as to immigrants who had just come into the country and were detained at the port, such boards "appointed by the commissioner of immigration or inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of the law"; that Section 17 has no application here where the immigrant Kostatos had already entered the country, was employed herein and was claiming a right to remain here as a citizen by birth; that nowhere in that section was there a provision for the administration of an oath; that this is not a case "in which a law of the United States authorizes an oath to be administered" as contemplated by the perjury statute; that, consequently, neither Kostatos nor Eleftherios Sitaras committed the crime of perjury and, absent perjury, the conviction of the offense of subornation of perjury can not be sustained.

Since a decision on this question would be of no small import, it is deemed necessary to set forth the pertinent legislative history of the immigration laws at some length. The Immigration Act of 1917 was a comprehensive statute which revised and codified all previous laws respecting the immigration, exclusion and deportation of aliens. The

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contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury * * *."

Title 18 U. S. C., Sec. 1622, 62 Stat. 774:

"Subornation of Perjury.

"Whoever procures another to commit any perjury is guilty of subornation of perjury * * *."

Secretary of Labor, aided by the Commissioner General of Immigration,[3] administered the Act, and the latter, under the direction of the former, was vested with broad powers in the formulation of rules and regulations. Section 23 declared "That the Commissioner General of Immigration shall perform all his duties under the direction of the Secretary of Labor. Under such direction, he shall have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder; he shall establish such rules and regulations, prescribe such forms of bonds, reports, entries, and other papers, and shall issue from time to time such instructions not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this Act * * *". 39 Stat. 874, 892.

Pursuant to the rule-making authority granted by Section 23 of the 1917 Act, a system of regulations for the conduct of deportation hearings was promulgated. A brief summary of these regulations and the practice followed under them may be found in the opinion of the Court in *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 45 (1950).

In an effort to standardize administrative practice, Congress enacted the Administrative Procedure Act in 1946 (5 U. S. C. A., Sec. 1001, et seq.; 60 Stat. 237). This

[3] In 1940, the administration of the Immigration Act was transferred from the Secretary of Labor to the Attorney General. In 1933, by Executive Order No. 6166 (5 U. S. C. A., Cum. Supp., page 70), the Bureau of Immigration was consolidated with the Bureau of Naturalization, the combined organization being known as the Immigration and Naturalization Service. The new organization was headed by an officer designated as the Commissioner of Immigration and Naturalization who acceded to the duties and authority previously possessed by the Commissioner General of Immigration. Accordingly, the new title of the new officer was substituted for the old one in the statute giving the power to make rules and regulations. 9 U. S. C. A. (1952 Ed.), Sec. 222.

Act sets forth the basic formalities to be followed in every case of adjudication required by statute (5 U. S. C. A., Sec. 1004; Sec. 5 of the A. P. A.). The function and authority of officers presiding at the hearings, together with such other matters as the burden of proof, the right to cross examination, and the components of the record for decision, are detailed in Sec. 7 (5 U. S. C. A., Sec. 1006). Among those things mentioned as within the powers of a presiding officer is the authority to "administer oaths and affirmations". Section 8 prescribes the steps to be taken in the rendering of the initial decision by the presiding officer and the review of it by the agency (5 U. S. C. A., Sec. 1007).

The immigration authorities, in disregard of the A. P. A., continued to conduct their deportation hearings in accordance with the regulations promulgated by the Commissioner of Immigration. However, the Supreme Court in *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, held that deportation hearings were subject to the provisions of the A. P. A. Sung, an alien seaman who overstayed his shore leave, was ordered deported. Having exhausted his administrative remedies, he applied to the District Court for the District of Columbia for habeas corpus, raising, as his sole ground, the objection that the administrative hearing had not been conducted in conformity with the A. P. A. The Supreme Court, in reversing the District Court and the Court of Appeals, held invalid the hearing conducted pursuant to the Immigration Commissioner's regulations.

As a result of the decision in the Sung case, Congress on September 27, 1950, declared that "Proceedings under law relating to the exclusion or expulsion of aliens shall hereafter be without regard to the provisions of Sections 5, 7, and 8 of the Administrative Procedure Act (5 U. S. C. A., 1004, 1006, 1007)", 64 Stat. 1048. The purpose and effect of this statute was to restore the practice which had existed prior to the Sung decision.

The Commissioner of Immigration and Naturalization, with the approval of the Attorney General, issued amended regulations governing deportation hearings on November 8, 1950, 15 Fed. Reg. 7636 (1950). Provision was made in the amended regulations for the conduct of hearings, and the officer assigned to conduct the hearings was authorized to "administer oaths and affirmations". Moreover, heading the list of the hearing officer's specific duties was the direction that, "At the commencement of the hearing under the warrant of arrest, the hearing officer shall (1) place the alien under oath or affirmation * * *".

The defendant has cited *Wong Yang Sung* v. *McGrath*, supra, in support of his argument that deportation hearings are governed by the provisions of the Administrative Procedure Act and it is true that this case did so hold, but by the subsequent action of Congress in 1950, the Administrative Procedure Act did not thereafter apply to proceedings relating to the exclusion or expulsion of aliens. However, the Sung case is important here for another pertinent reason. There, in the course of its argument, the government had called attention to the qualifying language of Section 5 of the A. P. A., i. e., that the A. P. A. was applicable "in every case of adjudication required by statute * * *", noting that there was no express requirement for any hearing or adjudication in the deportation sections of the Immigration Act of 1917. The government contended that this omission from the 1917 Act rendered the hearing provisions of the A. P. A. inapplicable. Mr. Justice Jackson, speaking for the Court (339 U. S., at page 49), replied that "* * * the difficulty with any argument premised on the proposition that the deportation statute does not require a hearing is that, without such hearing, there would be no constitutional authority for deportation. The constitutional requirement of procedural due process of law derives from the same source as Congress' power to legislate and, where applicable, permeates every valid enactment of that body". We conclude

that one effect of the decision is to read into the Immigration Act of 1917 a constitutional requirement that the Immigration and Naturalization Service conduct hearings in deportation cases.

It seems beyond any serious challenge that the regulations promulgated by the Commissioner of Immigration and Naturalization on November 8, 1950, were pursuant to statutory authority. As we have seen, the Supreme Court held in the Sung case that the 1917 Immigration Act required *some* hearing before deportation could be permitted; Congress had removed deportation hearings from the operation of the Administrative Procedure Act, in effect restoring them to their previous status to be operated pursuant to the Commissioner's regulations; and, finally, the Commissioner of Immigration and Naturalization possessed the broad power under Section 23 of the 1917 Act to issue the regulations setting forth the procedure for the necessary deportation hearing. John V. Carney, who administered the oath to the perjuring witness and who did not participate in the investigation preceding the hearing, was designated by the Immigration and Naturalization Service, pursuant to regulations, as an officer to conduct deportation hearings and administer oaths in that connection. Thus, the argument that the hearings in question were not authorized by law, and that the hearing provisions of the Administrative Procedure Act were applicable and were violated, is without basis in law.

It has been decided that a charge of perjury may be based upon false statements given at a hearing held pursuant to administrative regulations. In the language of Mr. Justice Whitaker, speaking for the Court in *United States* v. *Hvass* (1958), 355 U. S. 570, 575, "The phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base". See also 3 Wharton Criminal

Law (Anderson Ed. 1957), Sec. 1318, page 685; *United States* v. *Small*, 236 U. S. 405 (1915); *United States* v. *Morehead*, 243 U. S. 607 (1917).

The defendant charges error in failing to direct a verdict in his favor on the ground that the Government did not produce sufficient evidence to prove the essential elements of the crime of subornation of perjury. These elements are concisely stated as follows:

> "Subornation of perjury consists in procuring or instigating another to commit the crime of perjury."
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> "It is essential to subornation of perjury that the suborner should have known or believed or have had good reason to believe that the testimony given would be false; that he should have known or believed that the witness would testify willfully and corruptly, and with knowledge of the falsity; and that he should have knowingly and willfully induced or procured the witness to give such false testimony."
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> 70 C. J. S., Perjury, § 79 (1951).

Bearing in mind the essentials of the crime, we turn to consideration of the Government's burden of proof, particularly the need for corroborative evidence under the so-called "two witness rule" and the "accomplice rule".

Since proof that perjury was actually committed is a necessary element of subornation, the perjury must be established in the same manner as when the perjurer himself is tried. This means that the falsity of the testimony must be proven by the evidence of two witnesses, or by one witness supported by proof of corroborating circumstances. See *Hammer* v. *United States*, 271 U. S. 620 (1926); *Weiler* v. *United States*, 323 U. S. 606 (1945); *Goins* v. *United States*, 99 F. 2d 147 (4 Cir., 1938); 41 Am. Jur., "Perjury", Sec. 67, p. 37. As to the procurement or in-

ducement, however, this element of the crime of subornation need not be so corroborated. *Catrino* v. *United States*, 176 F. 2d 884, 888 (9 Cir., 1949), 41 Am. Jur., "Perjury", Sec. 78, p. 43; *Culwell* v. *United States*, 194 F. 2d 808, 812 (5 Cir., 1952); *Doan* v. *United States*, 202 F. 2d 674 (9 Cir., 1953).

The general rule that one may not be convicted on the uncorroborated testimony of an accomplice does not apply to procuring or inducing the perjury, as the suborner and the suborned are not accomplices:

> "* * * (S)o far as the rule requiring corroboration of the evidence of an accomplice is concerned as applied to the testimony of the suborned in prosecutions for subornation of perjury, the suborner and suborned are accomplices as regards the perjury itself, but as to other elements of the crime, such as procuring or inducing the perjury, they are not accomplices. * * *."

41 Am. Jur., "Perjury", Sec. 79, p. 44.

Viewing the evidence in the light most favorable to the Government, as this Court is obliged to do here (*Glasser* v. *United States*, 315 U. S. 60, 80 (1942)), the burden of proof has been met and the elements of the crime have been established. The falsity of Kostatos' testimony that he was an American, and of Eleftherios Sitaras' identification of him as an American, was well corroborated. Not only did Kostatos and Eleftherios Sitaras themselves admit their perjury, but the manifest of the S. S. Santa Irene was convincing evidence that Kostatos was a Greek seaman and not an American. In addition, the Government fully established by the testimony of one Mike Sitaras, a witness who had refused to join the scheme and who did not testify at any of the hearings, that the real John George Sitaras, the man whose identity Kostatos assumed, had been dead for almost thirty years. As to the procurement of the perjury, the testimony of Kostatos was, of itself,

sufficient to convict. In addition, it was bolstered and corroborated by the witness, Mike Sitaras, who testified that he was requested by the defendant to join in the effort to substitute the identity and name of the deceased John George Sitaras for that of Kostatos.

Defendant points to Eleftherios Sitaras' testimony in which he admitted that he lied for Kostatos, and argues that this testimony shows that it was not the defendant who procured Eleftherios Sitaras' perjury, but this argument is without merit. It is true that, after detailing conversations with the defendant in which this witness, Sitaras, claimed that the defendant had pleaded with him to swear that Kostatos was John George Sitaras, this same witness admitted, on cross-examination, that he refused defendant's request to testify falsely at the deportation hearing but did so because of the pleas of Kostatos himself. But his testimony shows that it was the defendant who brought him to the hearing at which he testified; that defendant told him what he should say about Kostatos, placed him on the witness stand and asked the predetermined questions calculated to elicit the testimony which the witness knew to be false.

Defendant alleges error in portions of the Court's charge to the jury: (1) reference to the trial of the defendant and others in Philadelphia, the defendants' plea of nolo contendere and the explanation of the effect of such plea; (2) the statement that "Mr. Petite is still practicing law in Baltimore at this time"; and (3) the instruction given in response to a written question addressed to the Court by the jury—"Does knowledge of how a witness will testify without actually having instructed him to so say make the defendant guilty?"

As to (1) above, it appears from the record that the fact that the defendant had been tried in Philadelphia was injected into this case by the defense after a warning by the Court and after defense counsel answered, "We'll

take that chance, Your Honor". In fact, defense counsel used the Philadelphia trial as the basis of his argument to the jury that his client was being persecuted. Following the delivery of the charge, defendant's attorney said that he had "nothing much of an exception", but that he was not in complete agreement as to the Judge's interpretation of *nolo contendere*. The Judge replied, "If I haven't made that clear, I will be glad to do it, if you will tell me how I should make that clear". Defense counsel declined the offer and stated, "We'll leave it that way. All right". Again the Judge said, "I will be glad to give them any further instructions if you want me to on that point". The final reply was, "No, I won't urge anything more on that, Sir". Certainly the defendant cannot be heard to say that he thus effectively objected. As this Court recently said in *Finn* v. *United States*, 256 F. 2d 304, 308 (4 Cir., 1958): "In the absence of objection at the trial, a claimed error in the charge will be noticed on appeal only in unusual circumstances * * *". Such circumstances are not present here.

As to (2) above, the explanation of the Court's remark is quite simple and the reason well known to defense counsel. One of the jurors met the Judge's law clerk in the courthouse elevator following testimony as to the defendant's good character as a lawyer and inquired whether the defendant was still practicing law. The law clerk did not answer the question and properly reported the incident to the Judge. At the close of the evidence and before argument, the Judge called counsel to the bench and advised them of the conversation between juror and law clerk, stating, "I am telling counsel for both sides this so that they may know that that question was in the juror's mind and they can pitch their arguments accordingly. If it is mentioned by either counsel in the argument, I think that along with the definition of nolo contendere that I will give to the jury, that I should state as a fact that Mr. Petite is still practicing law". Defense counsel made no objection to

the Judge's suggestion, gave no hint that it would not meet with his approval, and neither made objection nor took exception following the delivery of the charge. See *Finn v. United States*, supra.

As to (3) above, in answering the question the Court told the jury:

"Now, let me break it down. Knowledge of how the witness will testify does not make a defendant guilty. On the other hand, a defendant may be guilty without having instructed the witness what to say.

"A lawyer may be guilty of subornation of perjury even though he has not instructed the witness to say so if he knows that the testimony the witness is going to give is false and if he knows that the witness knows that it is false and yet he causes or induces the witness to do it and puts the witness on the stand, and the witness does so testify; then the defendant may be guilty.

"But mere knowledge of how the witness will testify is not of itself sufficient to make him guilty. He must, within the language I gave you, cause or induce.

"Is that clear?

"That is, mere knowledge of how the witness will testify is not enough. On the other hand, the Government does not have to prove that he instructed him how he should testify.

"It is enough if the lawyer, the defendant, in this case, knows that the testimony that the witness is going to give is not true and knows that the witness knows it, and still puts him on the stand to give it and causes and induces him to do it."

Defense counsel excepted, explaining in the following language:

"I mean the answer to the Foreman's question, I feel it should be, that it is only subornation of perjury when the

person who is charged with subornation of perjury causes, induces or instructs the person to so testify.

"Mere knowing that the person has testified or would testify unlawfully or commit perjury is not subornation of perjury."

However, throughout the Judge's charge he defined subornation of perjury as the procuring of perjured testimony. He referred to "the alleged inducement by the defendant of the witnesses to commit perjury" and he instructed that "To procure and to suborn, means to contrive or to induce, to instigate. That is what we mean by procuring or suborning * * *. It is a question of whether the defendant did it and whether he did it knowingly and wilfully". The jury was told:

"The principal dispute in the case is whether or not on the one hand George Kostatos saw the defendant, George Petite, before he was arrested, and if so, whether they agreed upon the story that George Kostatos was to tell knowing it to be false, and that George Petite assisted in arranging for others to support that story knowing it to be false; or on the other hand whether George Kostatos made up the story himself and did not see George Petite until after he had told the story once to the Immigration and Naturalization Service when he made the statement on October 23rd and that he deceived Petite into believing that it was true."

Viewing the charge as a whole, and looking at the entire answer to the jury's question, the conclusion is inescapable that the jury received an accurate, complete and impartial explanation of the necessary elements of the crime of subornation of perjury and could not have been misled or confused thereby to the defendant's prejudice.

Certain assignments of error in the admission of evidence are based upon the defense theory and argument that neither the deportation hearing of February 14, 1952,

nor June 16, 1952, was a proper "judicial proceeding" and that the oath was not taken before a component tribunal in a case in which a law of the United States authorizes an oath to be administered. Having reached a decision contrary to this theory, these alleged errors need no further discussion.

The defendant charges other errors in the admission and exclusion of evidence which were noted in his brief but not emphasized in oral argument. However, they have been reviewed and considered and, perceiving no prejudicial error, we deem it unnecessary to burden this already lengthy opinion with additional comments.

For the reasons stated herein, the conviction of the defendant on two counts of subornation of perjury is

Affirmed.

Judgment

Filed and Entered January 5, 1959

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7694

GEORGE B. PETITE, *Appellant*,

vs.

UNITED STATES OF AMERICA, *Appellee*.

APPEAL FROM the United States District Court for the District of Maryland.

THIS CAUSE came on to be heard on the record from the United States District Court for the District of Maryland, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said Dis-

trict Court appealed from, in this cause, be, and the same is hereby, affirmed.

MORRIS A. SOPER
United States Circuit Judge

CLEMENT F. HAYNSWORTH, JR.
United States Circuit Judge

H. S. BOREMAN
United States District Judge.

Order Denying Rehearing

Filed and Entered February 19, 1959

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7694

GEORGE B. PETITE, *Appellant,*

vs.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the District of Maryland, at Baltimore

This Court having on January 5, 1959, rendered its decision affirming the judgment of the said District Court appealed from in the above entitled case, and the appellant having on January 23, 1959, filed a petition for a rehearing of the said case, and the same having been fully considered:

It is ordered by this Court that the rehearing asked for be, and the same is hereby, denied.

MORRIS A. SOPER
United States Circuit Judge

CLEMENT F. HAYNSWORTH, JR.
United States Circuit Judge

H. S. BOREMAN
United States District Judge.

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No. [redacted] 45

In the Supreme Court of the United States

October Term, 1958

GEORGE B. PEETE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 784

GEORGE B. PETITE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 6a–21a; R. 7–25) is reported at 262 F. 2d 788. The opinion of the district court denying petitioner's motion to dismiss the indictment (Pet. App. 1a–5a) is reported at 147 F. Supp. 791.

JURISDICTION

The judgment of the court of appeals was entered on January 5, 1959 (R. 27). A petition for rehearing was denied on February 19, 1959 (R. 35). The petition for a writ of certiorari was filed on March 20, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner's conviction for conspiring to make false and fraudulent statements in proceedings before the Immigration and Naturalization Service, in violation of 18 U.S.C. 1001, barred his subsequent trial and conviction for the substantive offense of subornation of perjury in those proceedings.

STATUTES INVOLVED

18 U.S.C. 1621 provides:

> Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both.

18 U.S.C. 1622 provides:

> Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both.

STATEMENT

Following a jury trial in the United States District Court for the District of Maryland, petitioner was convicted on each count of a two count indictment charging subornation of perjury in violation of 18

U.S.C. 1622. He was sentenced to imprisonment for 6 months and to pay costs of the case (R. 5). The court of appeals unanimously affirmed his conviction (R. 7–25). The pertinent facts are these:

In 1952, petitioner, a Baltimore attorney, became counsel for George Kostatos, a defendant in deportation proceedings. The defense raised was that Kostatos was, in fact, a natural born citizen of the United States and thus not subject to deportation. Kostatos made such assertion, under oath, at a hearing held by the Immigration and Naturalization Service in Baltimore, Maryland, on February 14, 1952 (App. 30–52).[1] At hearings held in Philadelphia, Pennsylvania, on April 24, 1952, other witnesses residing in Pennsylvania appeared for Kostatos in support of this claim. At the third and final hearing held in Baltimore on June 16, 1952, one Louis Sitaras[2] testified under oath that Kostatos was an American citizen (App. 71–82).

On August 31, 1954, petitioner and others were indicted in the United States District Court for the Eastern District of Pennsylvania for conspiring to make false and fraudulent statements to an agency of the United States in violation of 18 U.S.C. 1001 (count 1), and conspiring to prevent the deportation

[1] "App." refers to petitioner's appendix in the court of appeals, which is designated "R. I" in the record now before this Court.

[2] Two individuals named "Louis Sitaras" were involved in these proceedings. One, a resident of Pennsylvania, testified in Kostatos' behalf at the Philadelphia hearing but not in Baltimore. The individual referred to in the text, whose perjury petitioner is charged with procuring in count 2 of the instant indictment, testified only at the second Baltimore hearing.

of Kostatos in obstruction of the immigration laws (8 U.S.C. 1251–1252; count 2). (App. 10–13). Two of the eight overt acts charged to have been committed in furtherance of each of the conspiracies were Kostatos' February 14 testimony and Sitaras' June 16 testimony (App. 11). The other overt acts involved the making of false affidavits and the oral testimony of various witnesses at the deportation hearings (App. 11–12). Upon petitioner's plea of nolo contendere to count 1 of the conspiracy indictment, he was fined $500 and sentenced to imprisonment for 2 months. Count 2 of the indictment was dismissed (App. 20–22, 28).[3]

The instant case arises from the indictment returned on August 21, 1956, in the District Court for the District of Maryland, charging petitioner with suborning the perjury of Kostatos committed at the February 14 hearing and that of Sitaras committed at the June 16 hearing (App. 1–4). Petitioner's motion to dismiss on the ground of double jeopardy was denied by the district judge, who found that the Philadelphia conspiracy conviction was a separate and distinct offense from the instant subornation charges (App. 5–9; 147 F. Supp. 791).

[3] His co-defendants, including Kostatos, had entered pleas of guilty to count 1. Count 2 was withdrawn as to them as well (App. 27–28).

There was also dismissed a second indictment charging petitioner with subornation of perjury at the *Philadelphia* hearing on April 24, 1952 (to be distinguished from the indictment in the present case which charges subornation of perjury at the *Baltimore* hearings on February 14 and June 16) (App. 24, 28).

DISCUSSION

1. The single contention advanced by petitioner is that his conviction for subornation of perjury violates the double jeopardy provision of the Fifth Amendment since the gist of that offense is the same as the conspiracy charge on which he was convicted in the District Court for the Eastern District of Pennsylvania. He points out that two of the overt acts charged to have been committed in furtherance of the conspiracy are the acts on which the present subornation charges are founded.

As petitioner acknowledges, "It is settled law in this country that the commission of a substantive offense and a conspiracy to commit it are separate and distinct crimes, and a plea of double jeopardy is no defense to a conviction for both". *Pereira* v. *United States*, 347 U.S. 1, 11; *Pinkerton* v. *United States*, 328 U.S. 640; *United States* v. *Bayer*, 331 U.S. 532. It is equally clear that "the same overt acts charged in a conspiracy count may also be charged and proved as substantive offenses, for the agreement to do the act is distinct from the act itself * * * ". *Bayer*, *supra*, at p. 542. Petitioner, however, attempts to bring this case within a recognized exception that where the core of the substantive offense is a joint agreement, and there is no element in it different from that in the conspiracy, conviction for both cannot stand. *Pereira*, *supra*, at 11; *Pinkerton*, *supra*, at 644; *Gebardi* v. *United States*, 287 U.S. 112, 122; *United States* v. *Katz*, 271 U.S. 354, 355. This is not such a case.

In the first place, the conspiracy to which petitioner entered a plea of nolo contendere was not a conspiracy to suborn perjury, but a conspiracy to make false and fraudulent statements to an agency of the United States, in violation of 18 U.S.C. 1001. That might or might not involve perjury. Even if the false statement were not given under oath and did not amount to perjury in the technical sense, it could still fall within the purview of that section.

On the other hand, on a charge of subornation of perjury, it must be proved, by the same quantum of evidence necessary to sustain a charge of perjury, that false testimony was in fact given under oath before a competent tribunal. *Hammer* v. *United States*, 271 U.S. 620. Hence the first conspiracy charge against petitioner was not the same as a charge of conspiracy to suborn perjury.

In the second place, as the district judge pointed out: "The essence of the conspiracy charge was the agreement * * *; the essence of the charge in the case pending in this court is that Petite procured and suborned Kostatos and Sitaras to commit perjury. To 'procure' and to 'suborn' mean to contrive, to cause, to induce, to instigate; and agreement is not a necessary element, although frequently present." (Pet. App. 4a). If a person coerced another into committing perjury by the use of threats, he would suborn perjury (cf. Wharton, *Criminal Law and Procedure* (12th ed.), §1327, p. 695; 4 A.L.R. 1308, 1319) even though under such a set of facts there would be no agreement sufficient to support a charge of conspiracy. This Court held in *Burton* v. *United States*, 202 U.S. 344, 377,

that agreement to receive a bribe and receiving a bribe are separate crimes. It held in *United States* v. *Bayer*, 331 U.S. 532, 541, that a trial by court-martial for illegally receiving monies to effect personnel transfers did not bar a subsequent conviction with others for illegally agreeing to effect such transfers, since receipt of money did not necessarily involve agreement. See also *Fall* v. *United States*, 49 F. 2d 506, 510–511 (C.A.D.C.), certiorari denied, 283 U.S. 867, in which an acquittal of two persons of conspiracy to defraud the United States was held not to bar the subsequent trial of one for the substantive offense of bribery since one of the two might have acted in good faith. And in *Pereira* v. *United States*, 347 U.S. 1, 11, this Court held that one who aided and abetted the commission of the substantive offense could also be found guilty of conspiracy since "aiding, abetting, and counseling are not terms which pre-suppose the existence of an agreement". In all these situations agreement would often be involved in the substantive offense, but not necessarily always. That is also the situation here.

2. For the foregoing reasons, we believe that the decision below is correct, as a matter of law, both on authority and on reason. It is recognized, however, that the subject of separate punishments for related acts is one that has traditionally commanded the Court's attention; that this general subject has recently been considered by the Court and will again be considered at the next Term; and that the precise issue here—the relationship of the crimes of subornation of perjury and of conspiracy to submit false statements—is

one that has not previously come before the Court. We do not deny, therefore, that the legal question presented is appropriate for review by this Court at this time and, accordingly, do not oppose the granting of the writ in this case.

3. The Court should be informed that the case is now under study by the Department of Justice to determine whether the initiation of the second prosecution was consistent with the policy of the Department with respect to separate prosecutions for related acts--a policy reflected, for example, in the recent statement by the Attorney General, occasioned by the decision of this Court in *Abbate* v. *United States*, 359 U.S. 187, directing the United States Attorneys to obtain prior Department of Justice approval before prosecuting cases in which a state prosecution has already been had for substantially the same acts. Department of Justice Press Release, April 6, 1959. Also under study is the further question whether, if not, the Attorney General has and should exercise the power, at this stage of the case, to seek vacation of the judgment of conviction and dismissal of the indictment.

CONCLUSION

For the reasons stated, the Government does not oppose the granting of the petition for a writ of certiorari.

Respectfully submitted,

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JUNE 1959.

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Office-Supreme Court, U.S.
FILED
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No. 45

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

GEORGE B. PETTIE, *Petitioner*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR PETITIONER

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2 Wharton, Crim. Law § 1339 10

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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the United States District Court for the District of Maryland is reported at 147 F.Supp. 791; that of the Court of Appeals at 262 F.2d 788.

JURISDICTION

The judgment of the Court of Appeals was entered on January 5, 1959 (R. 341). An order denying

rehearing was entered on February 19, 1959 (R. 347). The petition for certiorari was filed on March 20, 1959, and granted on June 15, 1959 (R. 348). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

QUESTION PRESENTED

Whether the petitioner may properly be convicted in successive prosecutions of both conspiracy and the substantive offense which is an object of the conspiracy when the substantive offense requires the same concert of action and the same actors as did the charge of conspiracy.

STATUTES INVOLVED

Title 18, United States Code:

"§ 371. Conspiracy to commit offense or to defraud United States.

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

* * * * *

"§ 1001. Statements or entries generally.

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or documen

knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

* * * * *

"§ 1621. Perjury generally.

"Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both.

* * * * *

"§ 1622. Subornation of perjury.

"Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both."

STATEMENT

Petitioner is an attorney of long standing at the Maryland bar. He was born in Greece, came to this country at an early age, worked his way through Brooklyn Law School, was admitted to the Maryland bar in 1929 and has been practicing law in Baltimore ever since. Early in 1952 he was retained to represent one Georgios Kostatos in a deportation proceeding (R. 31). Kostatos, a Greek seaman charged with

remaining in Baltimore when his ship sailed, was being held for deportation. His defense, and the one asserted on his behalf by petitioner, was that he was in reality an American citizen. He contended that he was born in Pennsylvania but was taken as a child to Greece, where he spent most of his adult life. As an American citizen, he claimed that he was not liable to deportation.

In the course of the deportation proceedings, three separate hearings were held by officials of the Immigration and Naturalization Service. Two of these hearings were in Baltimore, on February 11, 1952, and June 16, 1952, and one was in Philadelphia, beginning on April 24, 1952. During the course of these hearings, sworn testimony was given and affidavits received.

As a result of these hearings two indictments were returned by the grand jury for the Eastern District of Pennsylvania on August 31, 1954. The first, No. 17,934, was in two counts and charged the petitioner and five others with conspiracy "to make false, fictitious and fraudulent statements to an agency of the United States, ... the Immigration and Naturalization Service" and with conspiracy "to defraud the United States and an agency thereof, to wit: the Immigration and Naturalization Service," all in violation of 18 U.S.C. 371 (R. 10-13). The second indictment, No. 17,946, charged the petitioner in three counts with subornation of perjury growing out of the Philadelphia hearings.

Two of the co-conspirators in the first, or conspiracy, indictment were "Georgios Kostatos, also known as George Modestos Kostatos" and "Louis Sitaras, of

Baltimore" (R. 10).* Two of the overt acts charged in identical language in each count were.

> "*Overt Act No. 6.* On or about February 14, 1952, Georgios Kostatos, also known as George Modestos Kostatos did make a certain sworn statement at Baltimore, Maryland.
>
> "*Overt Act No. 7.* On or about June 16, 1952, at Baltimore, Maryland, Louis Sitaras, of Baltimore, Maryland, did make a certain sworn statement." (R. 11, 13)

On January 19, 1955, petitioner pleaded not guilty to the charge of subornation of perjury (R. 24); petitioner and all co-conspirators except Georgios Kostatos pleaded not guilty to the conspiracy indictment (R. 26). On February 16, 1955, Georgios Kostatos pleaded guilty to the conspiracy charge and three of the other co-conspirators changed their pleas to guilty (R. 26). The fifth entered a guilty plea on September 19, 1955 (R. 27), leaving petitioner as the only defendant who still maintained his innocence.

Petitioner waived trial by jury and proceeded to trial on September 19, 1955. At this stage, the government dismissed the second count of the conspiracy indictment (R. 27), the one charging conspiracy to defraud, and elected to proceed solely on the first count, which charged a conspiracy to submit false statements (R. 10). Trial on this and the subornation of perjury charge consumed four days

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* In the course of events which led to the indictments in question, there were two people involved named Louis Sitaras. The Courts below generally referred to them as "Louis Sitaras of Baltimore" and "Louis Sitaras of Marcus Hook." Only the actions of Louis Sitaras of Baltimore are of concern at this stage and, unless otherwise indicated, references herein are to him.

and petitioner's co-conspirators became witnesses for the government (R. 20). At the conclusion of the trial, petitioner was permitted to withdraw his plea of not guilty and enter a plea of *nolo contendere* to the first count of the conspiracy indictment (R. 27). All other charges against the petitioner were dismissed (R. 24, 28). The Assistant United States Attorney stated for the record that "the government believed that the penalty provided by that count and under that act, conspiracy to submit false statements, was adequate and formed a sufficient basis for the Court to impose a sentence commensurate with the offenses charged." (R. 21).

On November 10, 1955, all other co-conspirators were allowed to withdraw their guilty pleas to the second count of the conspiracy indictment and that count was dismissed as to them also (R. 28). Four of the co-conspirators were fined and placed on probation, a fifth received a two month sentence and petitioner was sentenced to two months imprisonment (which was served immediately) and a $500 fine. All sentences were under the first count of the conspiracy indictment (R. 28).

Ten months later, on August 21, 1956, the grand jury for the District of Maryland indicted petitioner on two counts of subornation arising from the Baltimore hearings in the deportation case (R. 1). The first count charged that he had suborned Georgios Kostatos to testify falsely in Baltimore on February 14, 1952, and the second that he had suborned Eleftherios Sitaras (Louis Sitaras of Baltimore) to testify falsely in Baltimore on June 16, 1952. Over petitioner's objection that this served to place him twice in jeopardy for the same offense, the District Court

denied a motion to dismiss the indictment on January 17, 1957 (R. 5). Petitioner pleaded not guilty but was convicted and sentenced to imprisonment for six months. His conviction was affirmed by the Court of Appeals on January 5, 1959 (R. 327).

SUMMARY OF ARGUMENT

Petitioner has, in substance, been twice tried, twice convicted and now faces a second prison term for what is essentially the same offense. The Courts below attempted to justify the second trial and the imposition of a second sentence on the theory of *Pinkerton* v. *United States*, 328 U.S. 640, and *Pereira* v. *United States*, 347 U.S. 1, that a conspiracy to commit an offense and the substantive offense committed in furtherance of the conspiracy are "separate and distinct crimes" for which dual punishment may be imposed. Petitioner's case falls squarely within one of the recognized exceptions to the doctrine laid down by *Pinkerton* and *Pereira*, for here concert of action and the concurrence of two or more persons is the core of the substantive offense, see *Gebardi* v. *United States*, 287 U.S. 112, just as it is the core of the conspiracy, thus rendering the two usually separable offenses identical and not subject to dual prosecutions.

Moreover, even if the conspiracy and the substantive offense were held to constitute distinct offenses on the theory that each requires proof of some element not required by the other, petitioner's constitutional rights were violated when he was subjected to successive trials on account of a single course of conduct. The rule laid down in *Pinkerton* and *Pereira* applies only to prosecution for conspiracy and the substantive offense in a single trial. *Abbate* v. *United States*, 359 U.S. 187, statement of Justice Brennan.

ARGUMENT

I. Conspiracy to Commit Perjury and Subornation of Perjury Constitute a Single Offense.

The essential identity of the two crimes for which petitioner has been tried and convicted necessarily requires application of the constitutional protection against double jeopardy. In the first case the government charged that he conspired with Georgios Kostatos, Louis Sitaras, and three others to make false statements to immigration authorities, and that in furtherance of the conspiratorial objective Kostatos, Sitaras, and the three others did in fact make false sworn statements to immigration authorities. In the second case the government charged that petitioner suborned Kostatos and Sitaras to make false sworn statements to immigration authorities. Precisely the same statements are involved in both cases. Under these circumstances, if petitioner is guilty of the conspiracy he must be guilty of the subornation; and if he is not guilty of the conspiracy he cannot be guilty of the subornation. The two offenses are in contemplation of law a single crime for which petitioner can be punished only once.

The government, in its Memorandum filed in this Court in response to the petition for certiorari, stated:

> ". . . the precise issue here—the relationship of the crimes of subornation of perjury and of conspiracy to submit false statements—is one that has not previously come before the Court."

Petitioner entirely agrees that the narrow issue here presented has not previously come before this Court. There is no concern about dual sovereignty, as in *Abbate* v. *United States*, *supra*, and *Bartkus* v. *Illinois*,

359 U.S. 121. Nor is there a broad scale attack upon the principle of *Pereira* v. *United States*, *supra*, and *Pinkerton* v. *United States*, *supra*, that the commission of a conspiracy and the substantive offense may both, in most instances, be prosecuted. Finally, there is no apparent congressional intent in this case to make separate criminal offenses from a single criminal act. *Gore* v. *United States*, 357 U.S. 386. See, generally, Kirchheimer, The Act, The Offense and Double Jeopardy, 58 Yale Law Journal 513.

Petitioner has no quarrel with the general principle that, in most instances, a defendant may properly be convicted both for conspiracy and for the substantive offense which is the object of the conspiracy. As stated by this Court in *Pereira*, 347 U.S. at 11:

> "It is settled law in this country that the commission of a substantive offense and a conspiracy to commit it are separate and distinct crimes, and a plea of double jeopardy is no defense to a conviction for both. See *Pinkerton* v. *United States*, 328 U.S. 640, 643-644, and cases cited therein. Only if the substantive offense and the conspiracy are identical does a conviction for both constitute double jeopardy."

That this general rule is not without qualification, however, was recognized in *Sealfon* v. *United States*, 332 U.S. 575, at 578, where this Court said:

> "It has long been recognized that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses. *Pinkerton* v. *United States*, 328 U.S. 640, 643. Thus, *with some exceptions*, one may be prosecuted for both crimes." (Emphasis added.)

The rule set forth in *Pereira*, *supra*, that punishment may properly be imposed for both the conspiracy

and the substantive offense, is subject to at least one well recognized exception. There are certain classes of crimes in which such duplication of offenses and punishments is never permitted. When the agreement and interaction of two or more persons is necessary for the completion of the substantive offense or when the substantive offense requires the same community of purpose as would a conspiracy to commit the offense, it is not proper to indict and convict for both the conspiracy and the substantive offense. Typical illustrations of this type of offense, acknowledged not only by state and lower federal courts, but by this Court as well, are adultery and fornication, *State* v. *Law*, 189 Iowa 910, 179 N.W. 145, *Shannon and Nugent* v. *Commonwealth*, 14 Pa.St. 226; bribery, *United States* v. *Dietrich*, 126 Fed. 664, *United States* v. *Sagar*, 49 F.2d 725, *People* v. *Wettengel*, 98 Colo. 193; 58 P.2d 279; unlawful rebates, *United States* v. *New York Cent. & H.R.R. Co.*, 146 Fed. 298. Bigamy and dueling are two other similar offenses in which this doctrine has been recognized by this Court. See *United States* v. *Holte*, 236 U.S. 140, at 145.

These are crimes in which the actual concurrence of two persons is absolutely necessary to the commission of the substantive offense. The cases all have one common denominator. A joint agreement is at the core of each of these substantive offenses. There must be, in each, a concert of action between the principal actors—the adulterers, the bigamists, the duelists, the briber and the bribed. See also *Gebardi* v. *United States*, *supra*; *United States* v. *Katz*, 271 U.S. 354; *State* v. *McLaughlin*, 132 Conn. 325, 44 A.2d 116; *People* v. *Purcell*, 304 Ill.App. 215, 26 N.E.2d 153; 2 Wharton, Crim. Law § 1339.

So, too, with subornation of perjury. This is another offense which falls within the class of cases where, since a concert of action must be present, two separate crimes cannot properly be constructed from the single act. There can be no subornation of perjury without a perjurer, *Hammer* v. *United States*, 271 U.S. 620, and a suborner. The actual cooperation and interaction between the two must always be present, just as in cases of adultery, bribery and dueling.

It is important to realize that petitioner's case is not a situation in which two or more persons conspire to suborn certain others. An indictment charging both conspiracy and subornation might be constitutionally permissible under these circumstances. *Williamson* v. *United States*, 207 U.S. 425. Petitioner's Maryland indictment, however, charges him with suborning Kostatos and Sitaras, two of his co-conspirators in the Philadelphia indictment, thus bringing his case squarely within the exception to the rule which permits separate punishment for conspiracy and the substantive offense.

Against this background, the indictment and trial in Philadelphia take on a wholly new context and can more properly be assessed. By the very nature of the crime involved, petitioner could not properly be convicted for conspiring with Kostatos and Sitaras to have them submit false testimony and also for suborning them to give the same false testimony charged in the conspiracy indictment. Yet that is the effect of the dual charges against petitioner. He was charged and convicted in Philadelphia with being part of a conspiracy. The object of that conspiracy was to submit false information under oath to an

agency of the United States. The acts of two of the co-conspirators were perjury committed at a deportation hearing—the same perjury which petitioner was subsequently convicted of suborning.

A mere reading of the two Philadelphia indictments reveals the government's concept of who the principal actor was. Count 1 of the Philadelphia conspiracy indictment involves petitioner, specifically or by fair inference, in five of the eight overt acts—all having to do with offering false affidavits or testimony of his co-conspirators. Count 2 of the same indictment adds an additional act—the attempt by petitioner to procure a false baptismal certificate. In addition, petitioner was charged with three counts of suborning perjury in Philadelphia. There was thus a clear attempt to label him as the focal point of the conspiracy, the attorney who arranged false records and suborned witnesses on behalf of a client.

It is basic that the act of one conspirator, committed in furtherance of the conspiratorial objective, is in law and in fact the act of each other co-conspirator. *United States* v. *Sansone*, 231 F.2d 887, certiorari denied, 351 U.S. 987; see *Braverman* v. *United States*, 317 U.S. 49. Petitioner was thus clearly implicated in all of the acts charged in the indictment, particularly in those shown as Overt Acts 6 and 7, the ones which, in effect, charge that Kostatos and Sitaras committed perjury at the Baltimore hearings of February 14 and June 16, 1952. This is all the more apparent since petitioner represented Kostatos at the Baltimore hearings, just as he had done at the Philadelphia hearing. Petitioner's involvement becomes even clearer in view of the fact that both perjurers, Kostatos and Sitaras, together with the other

Philadelphia conspirators, pleaded guilty to the Philadelphia indictment, thereby admitting all the factual recitals contained therein. *Lindsay v. United States*, 134 F.2d 960, certiorari denied, 319 U.S. 763; *Kahl v. United States*, 204 F.2d 864. Not only did they all plead guilty but, at petitioner's Philadelphia trial, they all gave evidence against him, laying at his feet the root of the conspiracy and the false evidence presented in furtherance thereof. The Assistant United States Attorney commented upon the "whole-hearted cooperation" of certain of petitioner's co-defendants (R. 20) and the light sentences imposed upon all except the alien Kostatos (R. 28) are indicative of the course the trial took.

Petitioner was, therefore, fully implicated in the Baltimore perjury by the Philadelphia indictment and the ensuing events. This was at least impliedly recognized by the United States Attorney. After agreeing to petitioner's *nolo contendere* plea, he moved to dismiss the Philadelphia subornation charge and stated (R. 23):

> "It is believed that the aforesaid conspiracy charge is an adequate basis upon which the court can impose a substantial sentence."

The government was thus asking the court to recognize petitioner's serious misconduct and impose an appropriate penalty. It cannot now ask the courts to impose another penalty for essentially the same misconduct.

II. The Fifth Amendment Prohibits Successive Federal Prosecutions Based Upon the Same Acts.

Ten days after the petition for certiorari was filed herein, this Court decided the case of *Abbate v. United States, supra*. In an opinion by Justice Brennan, the

majority held that successive state-federal prosecutions on account of the same criminal conduct did not violate the double jeopardy clause of the Fifth Amendment. Justice Brennan also filed a separate opinion which is squarely applicable to the facts of this case.

In *Abbate* the government had urged as an alternate ground for decision that the two statutes under which petitioner had been prosecuted were designed to vindicate different governmental interests and required different evidence to support conviction. Although the majority found it unnecessary to pass upon this proposition, Justice Brennan considered its implications to be so disturbing as to require comment." He pointed out that the government's reasoning "would apply equally if each of two successive *federal* prosecutions based on the same acts was brought under a different *federal* statute, and each statute was designed to protect a different federal interest." He went on to conclude, 359 U.S. at 197:

> "However, whatever the case under the Fourteenth Amendment as to successive state prosecutions, *Hoag* v. *New Jersey*, *supra*, or under the Fifth Amendment as to consecutive federal sentences imposed upon one trial, *e.g.*, *Gore* v. *United States*, *supra*, I think it clear that successive federal prosecutions of the same person based on the same acts are prohibited by the Fifth Amendment even though brought under federal statutes requiring different evidence and protecting different federal interests."

All of the cases permitting multiple punishment for a single course of conduct involve cumulative sentences imposed after a single prosecution. As pointed out by Justice Brennan, the basis of the double jeopardy clause is that a person shall not be harassed

by successive trials. It is, in essence, a prohibition not against being twice punished, but against being twice put *in jeopardy*. Obviously successive prosecutions offer far more danger of harassment than cumulative punishments. While the prosecutor may charge multiple offenses in a single prosecution, the court always has discretion as to the imposition of cumulative sentences.

The present case illustrates possibilities of harassment going far beyond anything suggested by *Abbate*. Petitioner pleaded *nolo contendere* to one count of the conspiracy indictment, with the obvious understanding that all other pending charges against him would be dismissed. All such charges were in fact dismissed (R. 23, 27). Petitioner received a comparatively "light" sentence and the record shows that he was not disbarred (R. 28, 241). After this sentence was served and petitioner returned to the practice of his profession, new charges were brought against him in Maryland. These charges resulted in a conviction and a sentence three times as severe as the original sentence. While the record contains no information concerning subsequent disbarment proceedings, this Court can take judicial notice of the fact that a verdict of guilty might have very different consequences from a plea of *nolo contendere* insofar as disbarment is concerned.

The foregoing facts strongly suggest that the United States Attorney in Maryland was not satisfied with the penalty imposed upon petitioner by the District Court in Pennsylvania. They strongly suggest that the prosecution was "shopping" for a sentence which it considered more commensurate with petitioner's conduct. This is precisely the sort of harassment

which the double jeopardy clause was designed to prevent. Nice distinctions about different evidence and different statutes cannot obscure the fundamental unfairness of successive prosecutions for a single course of conduct. The principles enunciated by Justice Brennan in *Abbati* compel reversal in this case.

CONCLUSION

For the foregoing reasons, petitioner urges that the judgment of the court below should be reversed and the case remanded with directions to vacate the conviction and dismiss the indictment.

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October 1959.

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Office-Supreme Court, U.S.
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No. 48

In the Supreme Court of the United States

October Term, 1959

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v.

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CITATIONS

Cases:

Abbate v. *United States*, 359 U.S. 187	4, 5
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both in Baltimore and in Philadelphia. As a defense to deportation, a claim was fabricated that Kostatos was born in the United States. Kostatos himself and one Sitaras so testified in the Baltimore hearings and others did so in the Philadelphia hearings. When the fraud was discovered, petitioner, Kostatos, Sitaras, and three other witnesses were indicted in the Eastern District of Pennsylvania for conspiring to make false statements to an agency of the United States.[1] Petitioner was also separately indicted for suborning perjury at the Philadelphia hearings. All of petitioner's co-defendants in the conspiracy indictment pleaded guilty. Petitioner went to trial on both indictments, but, at the close of the Government's case, he changed his plea to *nolo contendere* to the false-statement conspiracy charge and the Government dismissed the subornation indictment. Petitioner was fined $500 and sentenced to two-months' imprisonment, which he served.

Thereafter, petitioner was indicted in the District of Maryland for suborning the perjury of Kostatos and Sitaras at the Baltimore hearings. The testimony of those two witnesses had been alleged as two of the overt acts in the Pennsylvania conspiracy indictment. Petitioner's claim of double jeopardy was rejected, he was convicted and sentenced to six-months' imprisonment, and the conviction was affirmed by the court of appeals.

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[1] A second count of the conspiracy indictment also charged a conspiracy to obstruct the administration of the deportation laws, but that count was dismissed as to petitioner before trial and was later dismissed as to the other defendants as well.

When a petition for a writ of certiorari was filed raising the double-jeopardy question, the Government did not oppose its grant but informed the Court that the case was under consideration to determine whether the second prosecution was consistent with sound policy and whether, if not, it would be appropriate to seek vacation of the judgment and dismissal of the indictment. This motion is the result of that consideration.

DISCUSSION

As stated in our memorandum in response to the petition for certiorari, we agree with the well-reasoned opinions of both courts below that the offenses of conspiring to make false statements and of suborning perjury are separate crimes the separate prosecutions for which did not violate the double jeopardy clause of the Fifth Amendment. However, the Department of Justice has a responsibility for the control of Government litigation that is not confined to avoidance of legal error but extends to the formulation and implementation of enlightened and proper prosecutorial policies. In recognition of that responsibility, it has been concluded that the initiation of the second prosecution in this case was contrary to sound policy and that for that reason, and in the interests of justice, the indictment should be dismissed. The reasons for that conclusion are developed below.

I

THE INITIATION OF THE SECOND PROSECUTION WAS CONTRARY TO SOUND POLICY

It has generally been the policy of the Federal Government that several offenses arising out of a single

transaction should be alleged and tried together and should not be made the basis of multiple prosecutions, a policy dictated by considerations both of fairness to defendants and of efficient and orderly law enforcement. The policy is closely related to that against duplicating federal-state prosecutions that was recently reaffirmed following this Court's decision in *Abbate* v. *United States*, 359 U.S. 187, holding that the double jeopardy clause did not bar a federal prosecution for the same act for which the defendant had already been prosecuted by a state. Following that decision, the Attorney General issued a memorandum to the United States Attorneys (set forth *infra*, pp. 19–21) stating that, when a state prosecution has already been had, "there should be no federal trial for the same act or acts unless the reasons are compelling" and directing that no such prosecution be instituted without the approval of the appropriate Assistant Attorney General, the matter having first been brought to the personal attention of the Attorney General. The policy against multiple federal prosecutions is *a fortiori* to that against duplicating state-federal prosecutions, for there are more practical reasons why the Federal Government ought not be foreclosed by the prior actions of the states than there are for separately prosecuting federal crimes.

The policy against multiple prosecutions does not foreclose the possibility that there may be exceptional circumstances in which separate prosecutions for crimes arising out of the same transaction would be justified—a question which, necessarily, can be re-

solved only as such alleged circumstances present themselves. After full investigation, we are satisfied that no such circumstances exist here and that the second prosecution was not in accord with the sound policy against multiple prosecutions. It is for that reason that this motion is being filed.

A related factor supporting this motion is that, because of the policy against multiple prosecutions, the legal question presented by this case is for all practical purposes academic—particularly in view of the Attorney General's statement following the *Abbate* case. Unless this case is dismissed, therefore, the Court will be forced to decide a difficult constitutional question as to the propriety of action that was taken here by inadvertence and which the Government does not intend to take in the future.[2] In view of the frequently-reiterated policy of the Court of avoiding unnecessary constitutional pronouncements, it would be a disservice to the Court, we believe, to allow an unsound prosecution to force upon it decision of a constitutional question that is not of present or potential practical importance. And avoid-

[2] The question whether conspiracy to make false statements and subornation of perjury are separate crimes could, of course, arise in a case in which they are tried together and the question is whether separate sentences may be imposed, but in our view the questions of separate prosecutions and of separate sentences involve different considerations, at least in part. It is also true, as noted above, that the policy does not foreclose the possibility that a case may some day arise in which the circumstances are thought to justify separate prosecutions, but we think it will be time enough to consider that problem when that case arises. And, in such a case, it may be that the circumstances justifying the prosecutorial decision would also have an important bearing on the constitutional question.

ance of unnecessary constitutional decisions is equally in the interests of the Government, for the implications of such decisions can never be fully anticipated and they may ultimately affect interests much more vital than those immediately in issue. If the Government has, as here, no intention of exercising the power in issue, it is not to its interest to permit a case brought in contravention of sound policy to force a decision on the constitutionality of that power.

In this case, therefore, fairness to the petitioner, the interest of the Court in avoiding unnecessary constitutional decisions, and sound litigation policy on the part of the Government all coincide to support the judgment of the Department that the case should be dismissed.

II

THE COURT HAS POWER, ON MOTION OF THE GOVERNMENT, TO VACATE THE JUDGMENT OF CONVICTION IN A CASE PENDING BEFORE IT ON DIRECT REVIEW, AND TO DIRECT DISMISSAL OF THE INDICTMENT

We know of no obstacle to the Court's granting a motion to dismiss an indictment pending appeal from a judgment of conviction. Manifestly, the outstanding judgment of conviction must first be vacated in order to dismiss the indictment, but since that judgment is before the Court on direct review it has not yet become final and is within the plenary power of the Court.[3] Clearly, therefore, the Court

[3] We do not contend that the same power would exist in a proceeding involving only a collateral attack upon a judgment that has already become final, such as a proceeding in habeas corpus or under 28 U.S.C. 2255. In such proceedings the

has the *power* to take the action requested—vacation of the judgment and dismissal of the indictment—and, as we shall show, there is no reason either of policy or of law why that power should not be exercised in an appropriate case.

A. EQUITABLE ENFORCEMENT OF THE CRIMINAL LAWS REQUIRES SOME MEANS FOR TERMINATING CRIMINAL PROSECUTIONS PENDING ON APPEAL

Unless the Court has power, on motion of the Government, to dismiss an indictment pending appeal, the Department of Justice would have no control over a criminal case once it had gone to judgment in the trial court. If the defendant appealed the conviction, the Government would have no choice but to defend it on the merits[4] however unwise or contrary to policy the prosecution, however great the resulting injustice to the defendant, and however academic the issue may be for the future.

To a large degree, of course, prosecutorial policies can be effectuated by control over the initiation of criminal prosecutions by means of instructions to the United States Attorneys. With 94 different United States Attorneys initiating over 30,000 criminal prosecutions a year, however, occasional misunderstandings or differences in interpretation of announced pol-

court itself has only limited powers and may nullify the judgment only on grounds going to jurisdiction of the sentencing court.

[4] In the rare case in which there has been clear legal error, a confession of error can of course be filed, but that still requires a determination by the court on the merits (*Young* v. *United States*, 315 U.S. 257), and is very different from power to control litigation for reasons of sound policy.

icies are inevitable. In addition, not all the problems can be foreseen, and there may be no occasion to formulate a departmental policy until the attention of the Department is focussed upon the problem by a case which has already gone to judgment. And the circumstances making the formulation or change of a policy appropriate may arise only after a conviction has been had—for example, an intervening judicial decision, a change in the statute, or as in this case a specific clarification of the policy of the Department of Justice following a decision of this Court.

For these reasons, effective and enlightened control by the Department over prosecutorial and litigation policies cannot be achieved in all cases by pre-prosecution or trial supervision alone. In rare cases control at a later stage is required. The Department, in the exercise of its responsibility for equitable and orderly law enforcement, should be able to move to dismiss, and the court has the power to terminate, during the appellate proceedings, the few matured criminal prosecutions which have been determined to be inconsistent with the interests of justice or sound administration.

B. THERE IS A CLOSE PARALLEL FOR THIS PURPOSE BETWEEN CIVIL AND CRIMINAL LITIGATION

In civil proceedings, the power of the Government to move to have a lower court judgment in favor of the United States vacated and its complaint dismissed has never been doubted, and any distinction in this respect between a civil case and a criminal case is, we believe, more conceptual than real. It is true that a criminal

case is not a purely adversary proceeding and that there is an independent public interest in the outcome. But that is just as true of all "regulatory" litigation by the Government, and may well be true even of litigation in which the Government is asserting a pecuniary claim. In antitrust litigation, for example, it is difficult to see how the public interest is any less involved in sustaining an injunction than it is in sustaining a relatively small fine imposed in a criminal proceeding, and only last Term an antitrust injunction was vacated on motion of the Government in order to permit it, for policy reasons, to move to dismiss its complaint. *Guerlain, Inc.* v. *United States,* 358 U.S. 915. In criminal cases themselves, moreover, the prosecuting authorities have virtually complete control over the initiation of cases, and there is nothing different in kind in continuing prosecutorial control throughout the subsequent stages—where, in fact, because of the necessity for judicial action to vacate the judgment, such action would be subject to much greater supervision by the courts.

In sum, the public interest is involved in all Government litigation, and in all cases its effectuation necessarily depends primarily upon the judgment and good faith of the responsible Government officials. Where the proposed dismissal requires the action of the courts, as does a motion to vacate a judgment, the public interest no doubt justifies a closer scrutiny of the motion, to guard against an abuse of discretion, than might be appropriate in a case involving only private interests, but if the reasons for the action pass

that scrutiny there is no more reason in a criminal case than in a civil case to deny the power altogether.

That the power of the Government to move to terminate a civil proceeding after a judgment in favor of the United States derives from no different sources than the procedure suggested here is evident from the *Confiscation Cases*, 7 Wall. 454, one of the earliest decisions considering the authority of the Attorney General to control Government litigation. There, libels had been brought for forfeitures of certain vessels that had been used in aid of the rebellion, and decrees against six of the vessels were entered in the circuit court. On the appeal of the owners to this Court, the Attorney General, for reasons not disclosed in the opinion, moved that the decrees in favor of the United States be set aside and the libels be dismissed. In granting the motions, the Court, after summarizing the power of the United States Attorneys, subject to supervision by the Attorney General, to dismiss both criminal and civil cases in the circuit courts, observed (p. 458):

> Such control on the part of the district attorney ceases whenever such a suit, civil or criminal, is transferred to this court by writ of error, appeal, or certificate of division of opinion, as the thirty-fifth section of the Judiciary Act also provides, that it shall be the duty of the Attorney-General to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and such has been the unbroken practice of this court in such suits from the organization of the judicial system to the present time. Appointed, as the Attorney-General is,

> in pursuance of an act of Congress, to prosecute and conduct such suits, argument would seem to be unnecessary to prove his authority to dispose of these cases in the manner proposed in the respective motions under consideration * * *.

While those cases involved proceedings traditionally treated as "civil," nothing in the opinion suggests a distinction between the power to dismiss civil cases and the power to dismiss criminal cases, and the grounds upon which the Court relied would seem equally applicable to both. Moreover, a proceeding to enforce a forfeiture of property because of its use in the commission of a crime, although historically denominated as "civil," in fact vindicates essentially the same interests as does a criminal proceeding. Nor is there any other respect in which the differences in the two kinds of proceedings would seem to be relevant to the proper scope of the powers and duties of the Department of Justice in prosecuting them. If the Department may, for sound policy reasons, decline to defend a forfeiture decree in favor of the United States, it ought also be able, for similar reasons, to move to discontinue a criminal case that has been successfully prosecuted in the lower courts.

C. THE COMMON LAW LIMITATIONS ON THE ENTRY OF A *NOLLE PROSEQUI* ARE NOT APPLICABLE TO A DISMISSAL WITH PREJUDICE

A motion addressed to the court to vacate a judgment of conviction and dismiss the indictment rests, to some extent, upon different premises and serves a different function than the entry by the prosecutor of a common law *nolle prosequi*. To the extent that the development of the *nolle prosequi* power at common

law is relevant, however, we think it lends support to the procedure suggested here.

The essential characteristic of a *nolle prosequi* as it was known to the common law was that it was a dismissal of the indictment *without prejudice*.[5] By definition, a *nolle prosequi* was a dismissal which, although terminating the proceedings on the dismissed indictment, did not bar a subsequent reindictment and trial of the defendant, and it was in terms of that function of a *nolle prosequi* that the limitations on its entry were developed. Thus, although the prosecutor had unfettered discretion to enter a *nolle prosequi* at any time prior to trial,[6] it was said that he could do so during the trial only with the consent of the defendant. The reason for that limitation was simply that the defendant, having once been put in jeopardy, was entitled to a final disposition of the cause unless he waived that right by consenting to a dismissal without prejudice—*i.e.*, to a *nolle prosequi*. See *Commonwealth* v. *Tuck*, 20 Pick. (Mass.) 356, 365. Properly understood, therefore, the limitations on the entry of a *nolle prosequi* were limitations, not on the power of the prosecutor effectively to terminate the proceedings, but only on his right to do so without prejudice.[7]

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[5] *Dealy* v. *United States*, 152 U.S. 539, 542; *Queen* v. *Bidpath*, 10 Mod. 152; *Goddard* v. *Smith*, 87 Eng. Rep. 1007, 1008-1009.

[6] *Confiscation Cases*, 7 Wall 454, 457; *United States* v. *Brokaw*, 60 F. Supp. 100 (S.D. Ill.); *United States* v. *Woody*, 2 F. 2d 262 (D. Mont.). In England, the Attorney General still retains the absolute prerogative to enter a *nolle prosequi*. *Reg.* v. *Dunn*, 1 C. & K. 728; *Reg.* v. *Allen*, 5 L.T.R. 636.

[7] It is this common law concept of a *nolle prosequi* that is embodied in Rule 48(a) of the Federal Rules of Criminal Procedure, which provides that:

Although in concept a dismissal without prejudice, the entry of a *nolle prosequi* did operate in some cases to bar subsequent reindictment. That occurred when the prosecutor entered a purported *nolle prosequi*, without the consent of the defendant, after jeopardy had in fact attached. In such cases, the courts, although they could not interfere with the power of the prosecutor to terminate the prosecution, held that the prosecutor had no "right" to enter a *nolle prosequi* (*i.e.*, a dismissal without prejudice) and, in order to protect the defendant against double jeopardy, treated the dismissal as one with prejudice, having the same effect as an acquittal. See, *e.g.*,

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The Attorney General or the United States attorney may by leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

As the requirement of consent after jeopardy has attached demonstrates, that Rule was simply a codification of the traditional *nolle prosequi* power, the only change intended being the requirement, unknown to the common law, that leave of court be obtained before filing the dismissal. See Advisory Committee Notes to Rule 44, Preliminary Draft (1943), and Rule 50, Second Preliminary Draft (1944); 6 Proceedings of N.Y.U. School of Law Institute 170–171 (1946); *Dortch* v. *United States*, 203 F. 2d 709 (C.A. 6), certiorari denied, 346 U.S. 814; *United States* v. *Shanahan*, 168 F. Supp. 225, 230 (S.D. Ind.); *United States* v. *Dorrego*, 17 F.R.D. 340 (D.P.R.). Because of that obviously limited purpose of the Rule, we do not rely on its broad language, which is not in terms limited to pre-conviction dismissals, in support of the motion in this case. The Rule is not addressed to the power of a court to dismiss a judgment of conviction in order to permit dismissal of the indictment—a question that had not theretofore been presented—and whatever power the courts might otherwise have in that respect is neither enlarged nor restricted by the Rule.

United States v. *Shoemaker*, 2 McLean 114 (C.A. 7); *United States* v. *Farring*, Fed. Cas. No. 15,075 (C.C.D.C.). In *Commonwealth* v. *Smith*, 149 Mass. 7, 8, the Supreme Judicial Court of Massachusetts said:

> * * * The true rule would seem to be, that, after a trial has commenced, the Commonwealth's attorney, though he has the power, has not the right, to terminate the prosecution without a verdict; and his refusal of record to further prosecute the indictment has the effect of and amounts to an acquittal of the defendant, unless it is done with his consent. * * *

See also to the same effect, as indicating that a dismissal by the prosecution after verdict but before sentence would operate in bar of a subsequent prosecution for the same offense, *Commonwealth* v. *Tuck*, 20 Pick. (Mass.) 356; *Fletcher* v. *United States*, Fed. Cas. Nos. 4868–4869 (C.A.D.C.); *Mount* v. *State*, 14 Ohio Rep. 295, 303.

The true explanation of the common law rule, therefore, would seem to be that there was in fact no limitation on the power of the prosecutor to cause a criminal prosecution to be terminated and the only question was what effect should be given to that action. If jeopardy had not yet attached or the defendant consented, entry of a *nolle prosequi* did not operate to bar a reindictment. If jeopardy had attached, however, it was said that the prosecutor had no "right" to enter a true *nolle prosequi*—one without prejudice—and his dismissal of the case would operate to bar reindictment. In either event,

there was no question of the effectiveness of the dismissal to terminate the prosecution.[8]

If, as we think it did, the common law thus recognized the power of the prosecutor to dismiss a criminal case after jeopardy had attached, though with prejudice, we see no reason why he should not be able to move to dismiss with prejudice after conviction but while the judgment is still within the control of the courts. Since there is then a judgment outstanding, the prosecutor of course cannot dismiss the case by his own unilateral act (as in the case of a common law *nolle prosequi*) and must instead invoke the action of

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[8] There are two state cases which seem to hold that an attempted dismissal by the prosecutor after conviction is ineffective, but they can be explained, we think, on the ground that the dismissal was sought at a time when the court itself no longer had general power to vacate the judgment. See note 3, *supra*. Thus, *State ex rel. District Attorney* v. *Judge*, 48 La. Ann. 109, 35 L.R.A. 701, essentially reflects the concept that the dismissal power persists only so long as the court in which the dismissal is sought to be entered has authority under its general jurisdiction to overturn a jury verdict. In that case, the single remaining function of the trial judge, when the dismissal was sought, was to sign the formal judgment and pronounce sentence; significantly, a motion for a new trial had already been denied. Similarly, in *Commonwealth* v. *Dascalakis*, 246 Mass. 12, the attempted entry of the dismissal occurred after the power of the trial court to deal with the case under its general jurisdiction was over. For that reason, and the further reason that the dismissal issue was before *it* on collateral attack, the Supreme Judicial Court of Massachusetts held that the Attorney General of the Commonwealth had no authority in the premises. Whether or not those cases can be so explained, however, we find in their opinions no valid reasons of policy or otherwise why a court before which a criminal conviction is pending on direct review cannot, on motion of the highest prosecutorial authorities supported by valid reasons of policy, vacate the judgment and dismiss the indictment.

the court to vacate the judgment and dismiss the indictment. While it is the court's power rather than the prosecutor's that is then being exercised, the same considerations that underlie the prosecutor's power to dismiss prior to judgment—the primary responsibility of the executive for the proper conduct of criminal litigation—equally empower the courts, upon motion of the prosecutor, to vacate a nonfinal judgment and direct dismissal of the indictment. The only difference of substance is that, because judicial action is required, the courts have a greater responsibility to satisfy themselves that the reasons for the motion are adequate.

III

THIS COURT MAY MAKE A FINAL DISPOSITION OF THE MOTION AND A REMAND OF THE CASE TO THE DISTRICT COURT FOR CONSIDERATION OF THE MOTION IS UNNECESSARY

If the Court agrees that it has power to vacate the judgments below in order to permit dismissal of the indictment, there would remain only the question whether this Court should itself pass on the motion to dismiss or should vacate the judgments below and remand the case to the district court to permit that court to entertain the motion. Either procedure is of course proper, and no consistent pattern appears in the Court's disposition of similar motions in civil cases. In the *Confiscation Cases, supra,* for example,

the Court vacated the decrees and remanded the cases with directions to dismiss the libels, while in the *Guerlain* case, *supra*, the Court vacated the judgment and remanded the case without directions to permit the district court to pass on the motion to dismiss. Which procedure is appropriate depends simply on the balance of convenience in the particular case. Here, we think, there are several factors which suggest that the balance lies with final disposition of the motion by this Court: (1) the motion is based solely on general policy reasons the adequacy of which can be as readily appraised by this Court as by the district court; (2) the case is pending in this Court on the merits and it is appropriate that the motion be finally disposed of by this Court so that, if it is ultimately to be denied, the disposition of the case on the merits will not be delayed; and (3) the Court may find it necessary or appropriate to consider the reasons for the motion in this case in deciding the general question whether it has the power to vacate a criminal conviction to permit a dismissal of the indictment and, if it does, there would seem little reason to require a further consideration of the motion by the district court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this motion should be granted and that an order should be entered vacating the judgments of the district court and of the court of appeals and

remanding the case to the district court with directions to dismiss the indictment.[9]

J. LEE RANKIN,
Solicitor General.
MALCOLM R. WILKEY,
Assistant Attorney General.
WAYNE G. BARNETT,
Assistant to the Solicitor General.
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys.

DECEMBER 1959.

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[9] Should this motion be denied, the Government requests that it be allowed thirty (30) days from and after the date of the order denying the motion within which to file its brief on the merits.

APPENDIX

DEPARTMENT OF JUSTICE PRESS RELEASE, APRIL 6, 1959

* * * * *

MEMORANDUM TO THE UNITED STATES ATTORNEYS

In two decisions on March 30, 1959, the Supreme Court of the United States reaffirmed the existence of a power to prosecute a defendant under both federal and state law for the same act or acts. That power, which the Court held is inherent in our federal system, has been used sparingly by the Department of Justice in the past. The purpose of this memorandum is to insure that in the future we continue that policy. After a state prosecution there should be no federal trial for the same act or acts unless the reasons are compelling.

In *Abbate* v. *United States* and *Bartkus* v. *Illinois* the Supreme Court held that there is no violation of the double jeopardy prohibition or of the due process clause of our federal Constitution where there are prosecutions of the defendant, both in the state and in the federal court, based upon the same act or acts.

This ruling reaffirmed the holding in *United States* v. *Lanza*, 260 U.S. 377, decided by the Supreme Court in 1922. In that case Chief Justice Taft, speaking for a unanimous Court, said:

> We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject matter within the same territory * * *. Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other.

> It follows that an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.

But the mere existence of a power, of course, does not mean that it should necessarily be exercised. In the *Bartkus* case the Court said:

> The men who wrote the Constitution as well as the citizens of the member states of the Confederation were fearful of the power of centralized government and sought to limit its power. Mr. Justice Brandeis has written that separation of powers was adopted in the Constitution "not to promote efficiency but to preclude the exercise of arbitrary power." Time has not lessened the concern of the Founders in devising a federal system which would likewise be a safeguard against arbitrary government. The greatest self-restraint is necessary *when that federal system yields results with which a court is in little sympathy.* [Emphasis added.]

The Court held then that precedent, experience and reason supported the conclusion of separate federal and state offenses.

It is our duty to observe not only the rulings of the Court but the spirit of the rulings as well. In effect, the Court said that although the rule of the *Lanza* case is sound law, enforcement officers should use care in applying it.

Applied indiscriminately and with bad judgment it, like most rules of law, could cause considerable hardship. Applied wisely it is a rule that is in the public interest. Consequently—as the Court clearly indicated—those of us charged with law enforcement responsibilities have a particular duty to act wisely and with self-restraint in this area.

Cooperation between federal and state prosecutive officers is essential if the gears of the federal and state systems are to mesh properly. We should continue to make every effort to cooperate with state and local authorities to the end that the trial occur in the jurisdiction, whether it be state or federal, where the public interest is best served. If this be determined accurately, and is followed by efficient and intelligent cooperation of state and federal law enforcement authorities, then consideration of a second prosecution very seldom should arise.

In such event I doubt that it is wise or practical to attempt to formulate detailed rules to deal with the complex situation which might develop, particularly because a series of related acts are often involved. However, no federal case should be tried when there has already been a state prosecution for substantially the same act or acts without the United States Attorney first submitting a recommendation to the appropriate Assistant Attorney General in the Department. No such recommendation should be approved by the Assistant Attorney General in charge of the Division without having it first brought to my attention.

[s] WILLIAM P. ROGERS,
Attorney General.

U.S. GOVERNMENT PRINTING OFFICE: 1960

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Office-Supreme Court, U.S.
FILED
JAN 26 1960
JAMES R. BROWNING, Clerk

No. 45

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

GEORGE B. PETITE, *Petitioner*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN RESPONSE TO MOTION TO VACATE THE JUDGMENT AND DISMISS THE INDICTMENT

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On December 1, 1959, the Solicitor General filed a motion to vacate the judgment and dismiss the indictment herein. Petitioner advised the Court that he did not oppose this motion and specifically waived his right to file a reply. His position was set forth in a letter from his counsel to the Clerk of this Court under date of December 2, 1959. Subsequently, however, the Clerk advised counsel that the Court desired a printed response to the Solicitor General's motion.

Petitioner agrees with the government that the institution of the present prosecution was contrary to

sound policy and that this Court has power, upon motion by the government, to vacate the judgment of conviction and direct dismissal of the indictment. Repetition of the arguments and authorities relied upon by the government in support of these conclusions would seem superfluous. It hence becomes unnecessary to determine the serious constitutional question presented in the petition for certiorari, namely, whether the present prosecution was barred by the double jeopardy clause of the Fifth Amendment.

The Solicitor General has raised some question as to whether dismissal of the indictment at this time would constitute a dismissal with prejudice. Since any new proceedings against petitioner would be barred by the statute of limitations, however, this question is of no practical consequence.

For the foregoing reasons, petitioner joins in and consents to the Solicitor General's motion.

Respectfully submitted,

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January, 1960